A. It would stand to reason if the exempt carrier had to operate non-revenue miles on a return trip he would certainly have to get a greater rate than he now is able to get.

Q. Doesn't that presume that the exempt carrier is now passing along to the shipper the increased return which he receives by reason of this return load?

Mr. Allison: Mr. Examiner, Mr. Wheeler presupposes a condition which does not exist. It has been testified on direct examination that the shipper is the carrier, in many instances involving movements out of Florida of the commodities we have been talking about.

Mr. Edward Wheeler: I am taking his own statement. He refers to the shipper.

By Mr. Edward Wheeler:

Q. Do you know whether or not these exempt carriers are passing along to the shipper the results by way of revenue which he receives from his return load?

A. I don't know.

Mr. Diehl: I object to the question on the grounds pre-
[fol. 3081] viously stated.

Mr. Edward Wheeler: The witness has already answered.

By Mr. Edward Wheeler:

Q. Isn't it frequently true that return loads are taken by exempt carriers at a rate designed to return to them only their out-of-pocket costs for gasoline and oil?

A. I don't know that.

Mr. Edward Wheeler: I have no further questions.

By Mr. Nisbet:

Q. Mr. Hamil, with respect to a reference in your direct testimony to the rules your Commission has with respect to the practice of leasing equipment from exempt carriers, how long have the rule or rules been in effect, if you know?

A. That rule was promulgated during O.D.T. regulations.

Q. Briefly, can you tell us, if you know, what prompted the promulgation of the rule or rules in the first instance?

A. Immediately upon O.D.T. regulations all carriers apparently were in the transportation business, whether exempt carriers, or otherwise. We wanted to keep some control and order over the transportation system.

Q. The situation has changed materially since that time?

A. Well, we still maintain control and regulation over it through this method.

Q. In other words, the Commission, I take it, feels this is a good rule and accomplishes certain purposes which they [fol. 3082] feel are good so far as the transportation is concerned?

A. It has so proven itself.

Q. Now, then, in addition to the provisions which you described in your direct testimony, does the rule contain any provision with reference to providing for the method of compensation for the rental?

A. No, sir; it does not. That is a matter between the lessee and the lessor.

Q. Has it come to your attention in the course of your duties that these same exempt carriers are leasing equipment to shippers in Florida?

A. It has not come to our attention yet that that be the case.

Q. Do you have any knowledge at all that might be helpful to the Commission here in that connection?

A. In that connection our only knowledge would be that of arrests that have been made, of transportation being performed by a motor carrier who held no operating authority from the Interstate Commerce Commission or the State Commission, who had attempted to operate under the guise of a lease with a shipper, and, in practically all of those cases, we have broken through the lease and convicted them in the courts.

Q. Have there been frequent occasions of that kind?

A. Not frequent. They are isolated cases.

Mr. Nisbet: That is all I have.

By Mr. Lieberman:

Q. Does that relate to intrastate transportation—those [fol. 3083] arrests?

A. Yes.

By Mr. Eldred:

Q. Does the Florida commission regulate the rates or time schedules of irregular route common carriers authorized by the Interstate Commerce Commission?

A. No, sir; it does not.

Q. You have made no study or investigation to determine how many carriers have been authorized by this Commission to engage in interstate transportation within the State of Florida?

A. Our records contain that information.

Q. How many, do you know?

A. I don't have it with me.

Q. How many as a guess?

A. Quite a number.

Mr Eldred: That is all.

Exam. Lawton: The witness is excused.

(Witness excused.)

Exam. Lawton: We will take a two-minute recess before taking up the next witness.

(Short recess.)

Exam. Lawton: Come to order, gentlemen. The hearing is resumed.

Mr. Allison: Mr. Examiner, I have a witness here who has a ticket on the 6:05 plane and it is now 5:15. I would like to have him sworn, adopt Mr. Smalley's testimony, and [fol. 3084] tender exhibits similar to Mr. Smalley's, but, if there is going to be cross-examination I won't offer him because he can't remain that long.

Exam. Lawton: It will be somewhat cumulative, too?

Mr. Allison: Yes, sir; to show a pattern among the carriers. The operation of this carrier is Jacksonville to Atlanta.

Mr. Eldred: Let him get home. If he is going to adopt the same cross-examination, and the testimony will be the same on direct and cross—he is adopting both Smalley's and Sanders'?

Mr. Allison: Yes, sir.

MARTIN JOHNSON was sworn and testified as follows:

Direct examination.

By Mr. Allison:

Q. Please state your name and occupation.

A. Martin Johnson, president of Georgia-Florida Motor Express, Inc., 800 East Bay Street, Jacksonville, Fla.

Q. Mr. Johnson, you hold regular route common carrier certificate authority from this Commission between Atlanta, Ga., and Jacksonville, Fla.?

A. Yes, sir.

Q. Do you adopt the testimony, including cross-examination, given by Mr. Smalley?

A. Yes, sir.

Q. You attended conferences of the carriers and your [fol. 3085] testimony and your experiences are the same?

A. Yes, sir.

Q. Have you prepared an exhibit similar to the exhibits Mr. Smalley prepared?

A. Yes.

Mr. Allison: We would like to offer as an exhibit the exhibit identified by the witness.

Exam. Lawton: The income statement will be identified as Exhibit 44.

(Exhibit No. 44, Witness Johnson, was marked for identification.)

Mr. Allison: That is all, Mr. Johnson.

Exam. Lawton: You are excused.

(Witness excused.)

Exam. Lawton: Exhibit 44 is received.

(Exhibit No. 44, Witness Johnson, was received in evidence.)

Mr. Wells: Mr. Examiner, Mr. Stedman is the only other witness, and we will have him sworn, if agreeable, and ask that his testimony as presented be copied into the record as if read, and that the exhibit be numbered 45.

GORDON STEDMAN was sworn and testified as follows:

Direct examination.

Exam. Lawton: Is there any objection to the statement [fol. 3086] being copied into the record?

It may be copied as though read.

(The statement is as follows:)

My name is Gordon Stedman. I am secretary-manager of the Growers and Shippers League of Florida, and my business address is 45 West Central Avenue, Orlando, Fla.

The Growers and Shippers League of Florida is a voluntary incorporated non-profit organization of growers and shippers of fresh citrus fruit and fresh vegetables produced in and shipped from Florida. In this proceeding we represent as well the Florida Citrus Commission, a lawfully constituted body established by the Legislature of the State of Florida, and is charged with the statutory duty of protecting the interests of the Florida Citrus industry in obtaining and enjoying just, reasonable, and otherwise lawful transportation rates, charges, rules, regulations, and practices.

The Florida Fruit and Vegetable Association is an association of growers and shippers of fresh vegetables in and from Florida and its members, together with the membership of the League, represents approximately 80 percent of the total shipments of fresh vegetables from Florida.

The duty of the Growers and Shippers League of Florida, among other things, is to participate in any and all proceedings before regulatory governmental bodies, and others, considering matters pertaining to transportation of fresh [fol. 3087] citrus fruit and fresh vegetables in an endeavor to maintain costs for transportation at the most economical level that can be justified commensurate with service rendered and with a view toward placing these perishable food items in the ultimate consumers' hands in as nearly the same state as when they were harvested.

Because of the perishability of many of the items within the fresh fruit and vegetable classification, distribution requires a maximum of flexibility and transport agencies'

facilities have developed with the industry to provide a minimum of restriction.

It is our belief that in this proceeding we are confronted with issues that will seriously restrict the movement of these commodities. We therefore must voice our opposition to the adoption of any rules or regulations that will prohibit agricultural haulers from leasing their vehicles to certificated common or contract motor carriers for return hauls of freight not included in the exemption under the Motor Carrier Act.

Congress provided for exemptions of agricultural commodities in the Motor Carrier Act apparently recognizing the necessity of a free and unrestricted movement of these commodities to market and that motor truck transportation would render such service economically and efficiently.

Unfortunately, we have no yardstick to measure the degree of importance of this type of operation to the fresh citrus and vegetable industry. Certain data is available as [fol. 3088] to the overall movement by motor truck, but cannot be broken down to show the tonnage transported by agricultural haulers operating under the exemption provided in the Motor Carrier Act, and then leasing their equipment on return hauls to certificated common or contract motor carriers to transport non-exempt freight.

It would be economically unsound for these truck operators to return to producing areas empty.

I now wish to introduce a four-page exhibit which is a statement of rail, boat, and truck shipments covering the past 13 seasons in terms of the customary rail minimum carload and interstate truck distribution by States. Page one represents shipments of fresh citrus fruit and page two shipments of vegetables.

A rather steady and increasing movement by motor truck may be noted, which was curtailed to a marked degree during the war years, because of a lack of equipment, but coming back rapidly during the past two seasons. Truck movement of citrus and vegetables accounted for 46,155 carload equivalents during the 1947-48 season, or 31.66 percent of the total movement.

This exhibit is clear and self-explanatory, but we wish to direct your further attention to the fact that since the boat

lines have discontinued operations this means of economical transportation is no longer available to shippers of fresh fruits and vegetables and they are entirely dependent upon railroads and truck operators.

[fol. 3089] Shipments by rail and truck of citrus fruit through December 8, 1948, the latest figures available, amount to 21,681 carlot equivalents, and of this total 11,764 cars, or 54.26 percent, moved by rail and 9,917 cars moved by truck, or 45.74 percent of the total.

Shipments of vegetables by rail and truck through December 8, 1948, amount to 4,689 cars, and of this total 52.6 percent, or 2,468 cars, were moved by rail and 2,221 cars, of 47.4 percent, were moved by truck.

We bring this information into the record for the purpose of demonstrating by means of the only data available the breakdown of shipments to the various modes of transportation. We do not contend that all the truck shipments reported are transported by carriers leasing their equipment after the agricultural haul to common or contract carriers for return loads.

Information as to what that portion of truck shipments may be is not available, to our knowledge. We do believe that the data clearly indicates the proportion to which truck transportation has grown and its importance to the Florida fresh citrus and vegetable industries.

On pages 3 and 4 of this exhibit is a statem nt showing the interstate truck distribution by States of Flordia citrus fruit for the 1947-48 season. This data is presented to show that motor truck transportation of fresh citrus fruit from Florida is over a wide territory, not confined to so-called [fol. 3090] local distribution.

The information contained herein is by no means complete but we feel is indicative of the importance of motor truck distribution and is introduced for this purpose only.

The Florida citrus and vegetable industries at the present are in what can be considered a very serious economical position. Returns to citrus fruit growers are below the cost of production and while it is hoped this condition may improve we find no indications of any substantial improvement in the very near future.

Curtailing in any way whatsoever transportation by motor truck of these perishable commodities would be plac-

A. We want to secure the lowest transportation we possibly can for fresh fruits and vegetables.

Q. Do you know the amount of compensation which an exempt carrier receives for hauling return loads to Florida?

A. No, I do not.

Q. Assume with me for the purpose of this question that in many instances those exempt carriers receive for that return load compensation sufficient only to cover their gas and oil. On the basis of that assumption wouldn't a common [fol. 3101] carrier regularly engaged in traffic between Florida and northern points who received a normal rate, rather than a subnormal compensation for the southbound movement, be in a position to give you a lower rate than the present exempt carrier who received a compensatory rate in only one direction?

A. If everything in your assumption were true, I presume that would be the case.

Q. Have you any reason to believe that common carriers would not supply equipment necessary for the distribution of your products if exempt carriers were eliminated in substantial measure?

A. Well, I don't know. The thing is that Congress provided this exemption.

Q. I am not assuming the exemption is going to be withdrawn. I am merely assuming that restrictions will be placed on the return movement, trip leasing.

A. That would have the effect of eliminating the exempt hauler generally, I believe.

Q. That is correct.

A. Or to a great extent.

Q. Assume that happens. Have you any reason to believe that the common carriers would not fill that gap?

A. From what I have heard, the common carriers are not interested in the fruit and vegetable business. They have not gone out after it and do not have the equipment to handle it.

[fol. 3102] Q. You are speaking now of Florida?

A. Yes.

Q. Have you thought that one of the reasons they have not is that the exempt carriers were in there first?

A. That may be so.

Q. Had it occurred to you that if there were regulations by the Commission to prohibit trip leasing, but to permit long-term leasing, that that might take care of the situation? That is to say, there would still be the same number of trucks available.

Mr. Diehl: This witness is not a transportation man and he is not qualified to answer, and he has so disqualified himself.

Exam. Lawton: I don't think there is anything in his direct testimony about this.

Mr. Wells: Mr. Examiner, I offer Exhibit 45.

Exam. Lawton: Received.

(Exhibit No. 45, Witness Stedman, was received in evidence.)

Exam. Lawton: You are excused.

(Witness excused.)

Mr. Allison: I have one other witness I would like to produce to adopt Mr. Smalley's testimony and introduce some exhibits, and then one other witness who I will present briefly and that will conclude the Florida group. I don't think it should take over ten minutes.

[fol. 3103] B. S. Reid was sworn and testified as follows:

Direct examination.

By Mr. Allison:

Q. Please state your name and address and business.

A. B. S. Reid, president, R. C. Motor Lines, Inc., Jacksonville, Fla.

Q. R. C. Motor Lines is a certificated regular route common carrier under the authority of this Commission?

A. Yes. We also hold some irregular route authority.

Q. You operate generally between New York and Jacksonville?

A. And intermediate points.

Q. Is this a map of your operating territory?

A. Yes.

Mr. Allison: We ask this be received as the next numbered exhibit.

Exam. Lawton: That will be Exhibit 46, for identification.

(Exhibit No. 46, Witness Reid, was marked for identification.)

By Mr. Allison:

Q. Mr. Reid, did you hear the testimony of Mr. Smalley?

A. Yes, I did.

Q. Do you concur in and adopt his testimony with reference to the leasing practices of the carriers serving Florida?

A. I do, with one or two exceptions.

[fol. 3104] Mr. Smalley's company's experience in leasing was only since 1942. R. C. Motor Lines has been utilizing southbound trip leases since about 1936 from Baltimore, and that area, to Jacksonville, and the area along the coast that it serves, Savannah and Charleston.

Q. Have you prepared a five-sheet exhibit stapled together similar to the exhibits Mr. Smalley offered?

A. Yes, along the same lines.

Mr. Allison: We would like to offer that as the next numbered exhibit.

Exam. Lawton: The exhibit headed "R. C. Motor Lines, Inc., Trip Lease Statistics," may be marked Exhibit 47.

(Exhibit No. 47, Witness Reid, was marked for identification.)

Mr. Allison: That is all the direct of Mr. Reid.

Exam. Lawton: Is there any cross-examination?

Cross-examination.

By Mr. Nisbet:

Q. You were present in the hearing room during the cross-examination of Mr. Smalley?

A. I was, yes.

Q. Did you hear the questions propounded by Mr. Eldred and by myself?

A. Yes. I don't recall all of them specifically, but I was here and was trying to follow them.

Q. If I should ask you similar questions would your an-
[fol. 3105] swers be substantially the same as Mr. Smalley's answers were?

A. I believe so, very substantially the same. Our operation is somewhat different so therefore we would have slightly different answers.

I would like to add one thing that Mr. Smalley didn't mention. The cross-examination tried to develop, in my opinion, that if the common carriers would haul the northbound fruits and vegetables their problems would be solved. That is not true because there are still four or five months of the year there is not a northbound movement, and we would still have our problem during that time.

Q. Does your company lease to shippers or private carriers?

A. We do not.

Mr. Nisbet: That is all.

Exam. Lawton: Anyone else?

If not, you are excused.

(Witness excused.)

Exam. Lawton: Exhibits 46 and 47 are received in evidence.

(Exhibits 46 and 47, Witness Reid, were received in evidence.)

B. H. Overton was sworn and testified as follows:

Direct examination.

By Mr. Allison:

Q. Please state your name and residence.

A. B. H. Overton, St. Petersburg, Fla.

[fol. 3106] Q. Are you a registered practitioner before this Commission?

A. I am.

Q. How long have you been connected with, engaged in, or interested in the motor common carrier business?

A. About 29 years.

Q. Presently, what is your position?

ing in most instances an additional burden upon the producers as it will require transportation by more expensive modes and such costs are eventually borne by the producers further reducing their returns. It would restrict distribution to many small markets that are unable to purchase in carload quantities. To our knowledge there are very few certificated common motor carriers transporting fresh citrus fruits and vegetables from Florida serving these many small communities, and these communities are therefore dependent upon the services of the agricultural hauler involved in this proceeding.

The only alternative that may be used in distributing fresh citrus fruits and vegetables to these smaller communities is to ship in carload lots to terminal markets and redistribute [fol. 3091] them by motor truck, which is expensive, slow, and extremely inefficient.

Economy by the use of motor truck transportation is not only in generally lower transportation rates, but very substantial savings result by the elimination of handling charges at destination. Store-door delivery is usually made, which is a direct saving of unloading and cartage charges from the rail head to the wholesalers' place of business. These charges approximately 10 cents per box for unloading and from 10 to 15 cents per box for cartage.

Exam. Lawton: The exhibit tendered by the witness showing the movement of citrus fruits in carloads from Florida, and so forth, will be identified as Exhibit 45.

(Exhibit No. 45, Witness Stedman, was marked for identification.)

Exam. Lawton: Cross-examine.

Cross-examination:

By Mr. Eldred:

Q. Mr. Stedman, in your Exhibit 45, the years 1943-1944 was the second largest production that you have had, was it not, in a number of years?

A. Well, as far as shipments are concerned. I haven't the total production figures.

Q. I am referring to your shipments.

A. Yes.

Q. At that time 91.9 percent moved by rail?

[fol. 3092] A. That is right.

Q. Was that a good year for you financially in reference to the growers?

A. I haven't the return figures right here.

Q. You were able to get that quantity moved by rail, were you not, during that year?

A. That is right.

Q. And that was one of your largest years for shipments outside the State, I assume?

A. Yes, sir.

Q. What reason do you ascribe to the low price of citrus on the market at the present time which is causing low returns to your shippers?

Mr. Diehl: I don't know what the answer would be, Mr. Examiner, but I don't know that it bears on the issues in this case.

Mr. Eldred: I am cross-examining on his statement. I didn't object to his statement.

The Witness: Fruit and vegetable prices generally are coming down, and right now you have the biggest anticipated production of citrus fruit in the history of the citrus industry, approximately 99,000,000 bushels.

By Mr. Eldred:

Q. That has not been caused, then, by your transportation situation?

A. You mean the price?

[fol. 3093] Q. The price at your terminal markets.

A. In part I believe it is. It is hard to say. You have greater and greater quantities due to processing plants for canning out of that total.

Q. Why would that reduce your price at your terminal markets? I am assuming this is your fresh fruits here.

A. That is all fresh fruits.

Q. Yes.

A. I haven't any answer for the reduction of the low prices other than production.

Q. You would say it is due to either the truck rates or the freight rates charged by railroads?

A. That may be so, but the price is down and we have to maintain our transportation costs at the lowest level we possibly can.

Q. Does the use of the exempt carrier in addition to giving you probably lower rates than those carriers which are subject to rate regulation, produce any problems to you as an organization in selling your fruit?

A. Oh, I don't believe so, because I think perhaps there are certain disadvantages, but I think the advantages outweigh the disadvantages.

Q. Is it not all one-sided; is that correct?

A. I would say that is correct.

Q. Is it a fair statement that the reason that you are [fol. 3094] interested in exempt carriers is due to the fact that their rates are lower than those carriers that are regulated by the Commission?

A. Are you talking about motor carriers?

Q. Yes, I am speaking about motor carriers.

A. Out of the Florida area I have not been able to find where there are any regulated carriers to transport the perishable commodities.

Q. Have you ever made any investigation to find out what carriers are authorized by this Commission specifically to transport those commodities?

A. Authorized is one thing. I mean that hold themselves out to transport the commodity. So far as I know there is only one in the State.

Q. Have you made any investigation of these carriers?

A. No particular investigation except to find out if they were hauling fresh fruits and vegetables.

Q. Have you ever investigated their tariffs?

A. No, not to make a thorough search for any purpose.

Q. Well, is the reason you are using the exempt carrier, and you have not searched for the regulated carrier because you have no need to do so, that there has been sufficient exempt carriers to provide the service?

A. I suppose that is the answer to it. I don't have any opinion.

Q. Yes. Do you pay the carrier yourself, the organiza- [fol. 3095] tion that you represent, or who?

A. No, I represent an association of growers and shippers, and the Growers and Shippers League in Florida. It is a non-marketing organization.

Q. Do your members pay the carrier, or is the carrier paid at destination by the receiver of the commodities?

Mr. Diehl: If you know.

By Mr. Eldred:

Q. Certainly, if you know.

A. I wouldn't know how they transact their business.

Q. Then, how do you make these statements if you don't know how the fellows transact their business, that these exempt carriers are necessary?

A. Are you talking about the rate that is paid?

Q. Yes.

A. There are terms of sale. The jobber or wholesaler buys f.o.b. shipping point, and he assumes transportation. If the shipper sells at a market delivered he pays the transportation.

Q. Which way does the majority move?

A. That is hard to say. Marketing conditions will vary that.

Q. When you ship by rail as a matter of information is the method the same?

A. Yes, exactly the same method.

Q. You don't know what proportion is one way or the other?

A. No, because one year it will go one way and the other year another way.

[fol. 3096] Q. Do you have any idea of the amount of traffic moving in by private carriage as compared to exempt carriage?

A. Truck carriage?

Q. Yes.

A. I can't break these figures down.

Q. All you know is that they move by truck?

A. Yes, and all Exhibit 45 is for is to show the extent of truck movement.

Q. Do you know what the private carriers do with their trucks when they are not hauling the exempt commodities?

A. No. I just understand that they do try to lease their trucks to common and contract carriers.

I do know this: That on perishable hauls out of Florida northbound they will pick up onions in New York State and haul them southbound. I think quite a bit of that goes on, too.

Q. You don't know to what extent the proportion of the trucks transporting your commodities outbound are leased coming back?

A. No, sir.

Q. In other words, it might be possible entirely to prohibit the leasing of exempt carriers and still not affect the transportation by truck; is that true?

A. I don't think that would be entirely true.

Q. To what extent would it affect the citrus industry if that were so?

A. I couldn't answer that question.

[fol. 3097] Q. You couldn't tell us?

A. No.

Q. On the last page of your statement here, page 5, the top paragraph, what are you referring to there: "Curtailing in any way whatsoever transportation by motor truck"? What do you mean by that specifically insofar as this proceeding is concerned?

A. Well, we need as wide distribution as we can get and any curtailment, whether by preventing these leases, if they do occur, would hurt the perishable industry and the producer.

Q. Although you are not able to state to what extent they are being used?

A. No.

Q. You can see no possible benefit in the curtailing of these leases?

A. Benefit?

Q. Yes.

A. No, I think it would be detrimental.

Q. It is your opinion that the using of these exempt carriers by common carriers, leasing them, forces sound conditions in the transportation industry?

A. I wouldn't care to express an opinion. I am not in the transportation field.

Q. Then I gather, Mr. Stedman, that we might probably sum it up this way: You don't want anything to change conditions as they now exist in the motor carrier field?

[fol. 3098] A. So long as we have a flexible motor truck transportation for the handling of perishable commodities.

Q. And in your statement you have not taken into consideration the effect on motor carriers of this practice, or other forms of transportation?

A. No, I haven't, frankly.

Mr. Eldred: Thank you very much; that is all I have.

By Mr. Nisbet:

Q. I am not clear, Mr. Stedman, but is it your position, and that of the group you represent, that the Commission should promulgate no rules whatsoever affecting the practice of trip leasing engaged in by the certificated carriers?

A. That is right, and we don't believe that that regulation would work to the interests of the fresh fruit and vegetable industry. In other words, we have to have distribution, and motor trucks provide it.

Q. I take it you heard the testimony of Mr. Smalley who preceded you on the stand?

A. Yes, I heard part of it.

Q. And his reference to and description of the present type of lease which his company used, and the various details of their operation under a trip lease. Did you hear that testimony?

A. Yes.

Q. Do you think that is good or bad?

A. I haven't an opinion on that. I don't know enough about their operations.

[fol. 3099] Q. Are you familiar with the rules proposed in this proceeding, and which were attached to the notice of hearing issued by the Commission?

A. Yes, I have read them.

Mr. Wells: Would it save a little time if I stated my position on that on the brief, instead of here?

Mr. Nisbet: I am not going into any detail here at all.

Mr. Wells: I didn't want to cut you off.

Mr Nisbet: Your position and that of the witness may not be the same. I want his position.

Mr. Wells: I think the statement of the interest is the province of counsel and not of the witness.

By Mr. Nisbet.

Q. You stated, I believe, that you were familiar with the proposed rules.

A. Yes, I have read them.

Q. Do you have any position insofar as your group is concerned with reference to varying or disagreeing with the proposed rule 4 dealing with the leasing of equipment by certificated carriers to shippers or private carriers.

Mr. Diehl: The witness has already stated he has no opinion to express. The same thing was asked in a different form and the witness said he had no opinion to express, and he is not a transportation expert.

Exam. Lawton: The position of the shippers has not been mentioned as yet, as I recall.

[fol. 3100]. Did you say you were familiar with rule 4 to which he referred?

The Witness: I have read the rule, but I have no opinion.

Mr. Nisbet: That is all I have.

Exam. Lawton: Mr. Wheeler?

By Mr. Edward Wheeler:

Q. You state that you are not interested in the transportation situation as long as you have sufficient available vehicles to give you the distribution that you require; is that correct?

A. We have got to be interested in the overall transportation situation, but we do not want what we have now curtailed.

Q. Are you interested in any rectification of the present conditions which might result in lower rates?

A. You mean if these rules, or some rules were adopted that would result in lower rates would we be in favor of that?

Q. Yes.

A. I am director of the Traffic Bureau, Chamber of Commerce, St. Petersburg, Fla.

Q. Who do you represent at this hearing, and at whose instance are you here?

A. I represent the Florida Rate Conference, and I am here at the request of the common carriers serving Florida.

Q. Who comprises the Florida Rate Conference, very briefly?

A. And I might add at the direction of the Florida Rate Conference.

The Florida Rate Conference is composed of shippers and traffic organizations and organizations interested in transportation in the State of Florida, and was organized and is designed to get a state-wide method of handling some of our transportation problems where the interests of the State are similar.

Q. And you are concerned, then, in rendering that service with all types of transportation on all types of commodities to all points of the State?

A. I am, sir.

[fol. 3107] Mr. Lieberman: He is not interested in household goods transportation?

The Witness: I am not.

By Mr. Allison:

Q. Mr. Overton, will you state briefly what your desire and that of the Florida Rate Conference may be toward trip leasing practices in Florida as described by Mr. Smalley and the other witnesses?

A. We want to see come out of this investigation such a decision as will permit the continuance of the present practices by Florida carriers using trip leases, and are very anxious to see the trip leases continued and are perfectly agreeable to proper rules and regulations, and have investigated the methods used by Florida carriers and believe those should be satisfactory.

Q. Do you say that there is an economic problem concerned in the State's structure, the effect upon the receiving and the shipping public, as well as upon the carriers in the development of the type of trip leasing which has occurred in Florida?

A. I certainly do, and I carry it further and the problem is both economic and from a service standpoint. In other words, I am afraid without such method of augmenting equipment for southbound traffic we receivers of common carrier freight would run out of service, particularly during the winter season.

Q. One further question: Do you feel it would be sound or efficient to attempt to experiment with some new or different systems which has not yet developed or evolved from [fol. 3108] from the practices of the Florida carriers and to discard this sytem which has evolved?

A. I certainly do not because I believe this system which has evolved does not contain the abuses which have been referred to in that small portion of the testimony I have heard in this proceeding, and that it does properly protect the carriers and the shippers and permit the regulatory bodies to enforce reasonable regulations.

Q. Is there anything you care to add, either for yourself as a witness, or for the carriers you represent?

A. I don't believe so, because of the lateness of the hour.

Mr. Allison: The witness is available for cross-examination.

Cross-examination.

By Mr. Edward Wheeler:

Q. I take it from your last statement that you do not believe there are abuses prevailing in the industry today.

A. I think you are unduly broadening my statement. I referred particularly in my statement to the method of handling trip leases into and out of Florida, and particularly by the common carrier group, the regular route common carrier group into and out of Florida.

I did not refer to the situation throughout the nation or in other areas.

Q. Are you aware of all of the arguments that have been [fol. 3109] made for trip leases in the southbound movement?

A. I think I am aware to the full extent that a shipper representative can become aware of it. I have had them described to me informally, and under oath, and again

heard them repeated today, and to that extent I believe I am familiar with them.

Q. And you don't think there are any abuses in that?

A. In that particular end; no, sir. I think they have done an excellent job.

Q. Do you feel that the Interstate Commerce Commission, with its present rules, need not be concerned over violations that are occurring to the present rules?

A. I certainly did not testify to anything like that at all. My testimony went to the fact that the rules and regulations that may be promulgated as a result of this investigation should permit the operations and the trip leasing to continue by the common carriers operating into Florida as they are today.

Exam. Lawton: You mean using the exempt carriers on southbound hauls?

The Witness: Yes, sir. It is a very important factor.

By Mr. Edward Wheeler:

Q. Do you withdraw your testimony, then, with respect to the abuses that presently exist in that traffic, in that southbound movement at the present time, as to trip leases?

A. I don't recall testifying as to abuses that exist in it.

Q. Perhaps I misunderstood your testimony. I thought [fol. 3110] you indicated in your belief there were no abuses in that movement at the present time.

A. I indicated that the method used by the common carrier group operating into Florida I thought eliminated abuses and permitted proper enforcement by the regulatory bodies.

Q. You are willing to have your other statements judged on the same basis of accuracy as you are this statement that you have just made?

A. Yes, sir.

Mr. Edward Wheeler: I have no further questions.

By Mr. Nisbet:

Q. Mr. Overton, in your testimony, when you referred to the method utilized by the common carriers serving Florida,

did you have reference to the method or plan outlined by Mr. Smalley in his testimony?

A. Yes, sir; and testified to by him and the other carriers, that it is the method used by the regular route common motor carriers serving Florida.

Q. I take it you had reference to the form of trip lease which he introduced here.

A. I think it is an excellent form. I sweat blood and died over one in 1942.

Q. You have that in mind as part of the method; is that correct?

A. Absolutely, sir.

Q. And the other details which you told us about?

[fol. 3111] A. That is correct, and that the other witnesses for the carriers serving Florida have adopted and indicated they also used.

Q. If such a plan as that was approved in a separate proceeding by the Commission, I take it you would have no objection to the Commission issuing other rules and regulations insofar as other phases of the trucking industry go?

A. My interest as to leasing goes to the territory I am in. I do believe it would not be wise to have numerous methods of handling this situation throughout the country.

Q. In the course of your duties and associations, have you had occasion to come in contact with situations where the exempt carrier has subsequent to performing transportation pursuant to a lease agreement gone back and served the same shipper, only made a lease directly to the shipper?

A. Not to my knowledge, sir.

Q. You have no knowledge on that?

A. No, sir.

Mr. Nisbet: That is all.

Exam. Lawton: If there is nothing further, you are excused.

(Witness excused.)

Mr. Allison: That concludes our presentation, and I wish to express our appreciation of the indulgence of the Examiner.

Mr. Diehl: Mr. Wells asked me to express the same thing to the Examiner on the record.

[fols. 3112-3115] Exam. Lawton: We will adjourn until 9:30 tomorrow morning.

(Whereupon, at 6 p. m., the hearing was adjourned until Thursday, December 16, 1948, at 9:30 a. m.)

[fol. 3116] PROCEEDINGS

December 16, 1948:

Exam. Lawton: Came to order, please. We will resume the hearing.

Mr. Dixon.

Mr. Dixon: I will be glad to proceed, if I may.

O. G. LONSKEY was sworn and testified as follows:

Direct examination.

By Mr. Dixon:

Q. Please state your name and address.

A. My name is O. G. Lonskey and I reside at 1414 Whittier, Detroit, Michigan.

Q. You are connected with what company, Mr. Lonskey?

A. I am vice president and general manager of the Automobile Shippers, Inc.

Q. Does that company, as its name implies, engage in the transportation of motor vehicle traffic?

A. It does.

Q. It is so engaged as a common carrier under authority of the Interstate Commerce Commission?

A. It is under Docket MC 65392.

Q. Are you restricted to the transportation of motor vehicle traffic?

A. We are.

Q. That is in the nature of a highly specialized transportation movement, is it?

[fol. 3117] A. It is.

Q. How long have you been with the company, Mr. Lonskey?

A. For 15 years.

Q. You were with the company prior, then, to federal regulation?

A. Yes, sir.

Q. That is, federal regulation under the Motor Carrier Act?

A. That is right.

Q. Has your company, since the period of your going with it, been engaged in this type of transportation exclusively?

A. We have.

Q. In the transportation of motor vehicle traffic, do you transport it by the truckaway method, utilizing specially designed equipment?

A. Yes. We also transport by the driveaway method, the so-called driveaway method.

Q. In the movement of automobile traffic, is that predominantly a truckaway movement?

A. It is.

Q. And that traffic moves on semi-trailers designed to transport traffic on two levels?

A. Specially designed trailers, yes.

Q. That equipment is not readily adaptable to the transportation of any other type of freight, is it?

A. No, it is not.

Q. I will ask you, is the transportation of automobile [fol. 3118] traffic predominantly a one-way loaded movement?

A. It is.

Q. The traffic moves from points of manufacture and assembly into a radial territory, is that the normal method?

A. That is correct.

Q. And the trailer returns empty to the point of origin?

A. That is correct.

Q. Are your rates for the transportation of automobile traffic then predicated upon what would be a one-way loaded movement and a return empty movement?

A. That is right.

Q. Does your company use leased motor vehicle equipment in performing that transportation?

A. We do.

Q. Will you explain the nature of your lease arrangements? From whom do you lease and under what circumstances?

A. Our particular company owns all the trailers and we lease the tractors from individuals. This is individuals driving the tractors themselves. They are employees of the company.

Q. Are they what are termed in the industry owner-operators?

A. That is true.

Q. Is it your statement that the owner, when driving that equipment, is treated as a company employee?

A. He is.

Q. What do you do to treat him as a company employee? [fol. 3119] First, is he on your payroll?

A. Yes, he is paid like a company driver, that is, a driver driving company-owned equipment. He gets two checks. One is for his wages and the other is for the earnings of his truck.

Q. Speaking from the standpoint of wages, what are the wages paid to the owner-operators, are they uniform?

A. Yes, they are in accordance with the union contract.

Q. Your owner-operators are all members of the teamsters' union, are they?

A. They are.

Q. And receive, by way of wages, the same amount as your regular company employees?

A. That is true.

Q. Then you say they also get a check for the use of the equipment?

A. That is correct.

Q. How do you compute the rental compensation for the use of the equipment, on what basis?

A. A percentage basis.

Q. The percentage of the gross revenue?

A. Percentage of the gross revenue, that is right.

Q. Is that percentage uniform as between all of your owner-operators?

A. Yes, it is.

Q. They all get the same percentage?

[fol. 3120] A. That is right.

Q. How is that rental compensation percentage arrived at? Is it a matter of individual bargaining with each owner-operator, or do they have some joint representation?

A. It is negotiated with the local union.

Q. Is the rental compensation actually contained in the union contract?

A. It is.

Q. It is negotiated at the same time the wage scale is negotiated?

A. That is true.

Q. By the union representative and management?

A. That is right.

Q. For how long does your union contract run, the one currently in effect, the one you are currently operated under? Is it a long-term contract?

A. Yes, our present contract was entered into in 1945 for a period of five years. However, the wage scales are subject to revision each year by rider.

Q. At the time of negotiating any change in the wage scale is the rental compensation also subject to negotiation?

A. Yes, it is.

Q. And is it common to negotiate both the rental compensation and the wage scale at the same time?

A. We do, always.

[fol. 3121] Q. When you went with the company, I think you said 15 years ago, was the company at that time using owner-operators?

A. We were.

Q. And was the company at that time paying the rental compensation on a percentage of the revenue basis?

A. We were and they were several years prior to that.

Q. That has been the uniform practice, so far as your company is concerned, during that entire period of time?

A. That is right.

Q. Do you have any particular reason for utilizing a percentage of the revenue basis rather than some other basis?

A. Yes. In the first place, it is a simple method.

In the second place, it properly compensates the owner-operator for the services performed. As an example, he may be assigned a load of Cadillacs, let us say, which prob-

ably weigh 16 or 17 thousand pounds, for which he gets a greater revenue than if he was assigned a load of Fords or Plymouths, which probably would weigh only less than twelve thousand pounds.

Q. Why should a driver or an owner-operator receive more money for carrying the heavier weighted vehicle?

A. Well, it is a natural conclusion that it costs him more to operate in gas and oil and it is a greater use of his equipment. Incidentally, all of these owner-operators furnish their own tires on the trailer. That is a part of the agreement. Consequently, greater use is made of the tires.

[fol. 3122] Q. In other words, is it your statement that the heavier the vehicle the more usage there is of the equipment by way of tire wear and the cost of gasoline and oil and so forth?

A. That is true.

Q. In publishing your rates for the transportation of automobiles, do you reflect that increased cost of transporting the higher weighted automobiles? Are your rates so predicated on a weight basis?

A. Yes, all our rates are published on a dollars and cents per hundredweight basis.

Q. In other words, where your company transports four large automobiles as compared with four small automobiles, does the company receive a higher tariff return?

A. That is right. The rate is the same, but the total revenue is greater.

Q. So that if the owner-operator conducts the operation with tractor equipment leased to your company, does it necessarily follow where he is on a percentage of the revenue basis that he also makes more money for the performance of that service if the cars weigh more?

A. That is right, he gets a greater return.

Q. Is there some greater difficulty in the loading and unloading of the heavier cars as compared to the light cars?

A. Yes, that is natural. The heavier car is more difficult to load and unload than the small car where you have plenty of clearance and don't have to exercise extreme care.

[fol. 3123] Q. Is that type of traffic a somewhat high value type class of traffic?

A. Definitely so.

Q. Does extreme care have to be exercised in the loading and unloading of that particular type of traffic?

A. It does.

Q. Getting back for the moment to the payment of the wages to these owner-operators, does your company make the Social Security payments on those wages?

A. Yes, we do.

Q. The same as an employee of the company?

A. That is right, withholding tax, and so forth.

Q. You withhold and pay into the Treasury Department for income tax purposes on those wages?

A. That is correct.

Q. There has been some statement of record by previous witnesses as to owner-operators receiving actually less by way of wages than a company employee by virtue of the fact that they are leasing equipment and services at the same time and that their cost of operation may exceed the difference between their gross receipts and the normal driver's wages and that therefore they are working for less money than a company employee. Have you any comment to make on that?

A. I don't see how it could happen. We pay the driver a percentage of the gross revenue less the wages. We give him the wages in a separate check and the balance is his [fol. 3124] rental. I don't see how that could possibly happen.

Q. What has your experience been over 15 years as to whether your owner-operators make money by the lease of their equipment or whether they are losing money?

A. They definitely make money.

Q. What is your statement as to whether or not your owner-operators prefer to be owner-operators as opposed to being employees of the company?

A. I can probably put it this way: Before the war, we had quite a number of men who were company drivers. After the war they practically insisted on being permitted to own their own tractors and be owner-operators. There isn't one of them today who would like to go back to the company driver status.

Q. Are you speaking of men who were in the service and then returned?

A. That is right.

Q. And it is your statement that they preferred to return on an owner-operator basis rather than as a company driver?

A. That is right.

Q. Did you examine the rules and regulations proposed by the Interstate Commerce Commission and also the rules proposed by the American Trucking Association, the truck leasing committee?

A. Yes, sir, I did.

Q. Are you familiar with the fact that under the Commission's proposal there is a suggestion that the payment [fol. 3125] of rental compensation on a percentage basis be barred?

A. I am.

Q. And that that is not included in the American Trucking Association proposal?

A. That is true.

Q. What is the attitude of your company toward that particular proposal of the Commission? Do you favor it or oppose it?

A. We strongly object to prohibiting the payment of rental compensation on a percentage of the revenue basis. That has been the practice of our particular company and I know it has been the practice of the industry since its inception.

Q. Just as a foundation for that statement, you occupy some position with the National Automobile Transporters' Association, do you not?

A. Yes, I am Chairman of the Board of the National Automobile Transporters' Association.

Q. And your company is a member of that association?

A. That is true.

Q. Have you been active in that association for some years?

A. Yes, I have.

Q. You have been Chairman of the Board of Directors prior to this year, have you not?

A. This is the second year I have been Chairman of the Board and prior to that I was Secretary of the Association for three years.

[fol. 3126] Q. Have you been active on their tariff committee and other committees relative to operations in general?

A. Yes, I have. At one time for several years I was the chairman of the tariff committee.

Q. Through those activities are you generally familiar with the manner in which automobile traffic is handled by the common motor carrier?

A. I consider myself so.

Q. Is that the basis for your statement that this type of payment of rental compensation is somewhat common in the industry?

A. That is correct.

Q. Should the Commission bear the payment of rental compensation on a percentage basis, could you or would you continue to use owner-operators paying them on some type of use basis?

A. Yes, we would continue, but we would have to develop some other formula. The result would probably be the same.

Q. Your objection is from an accounting standpoint, is that correct?

A. That is right.

Q. You feel that you would have to reach approximately the same economic result, that is, the amount paid to the owner-operator?

A. That is correct. Incidentally, that is part of our union contract. We must pay them on a percentage of the revenue earned.

[fol. 3127] Q. From your experience is the owner-operator interested in the amount he receives for his total service and the use of his equipment or is he interested in the manner in which you compute the amount?

A. He is interested in the dollars and cents that he is going to get.

Q. So that if you went to some other basis of compensation computation, do you feel that you could satisfy the owner-operator unless you produced approximately the same return to the owner-operator?

A. I couldn't. I would have to find some formula to do that.

84—26, 35, 36

Q. Did you, preparatory to testifying then in this proceeding, reproduce copies of the leased equipment agreement under which your company operates?

A. Yes, sir, I did.

Exam. Lawton: That may be identified as Exhibit No. 48.

(Respondent's Exhibit No. 48, Witness Lonskey, marked for identification.)

By Mr. Dixon:

Q. Mr. Lonskey, I hand you what has been marked for identification as Exhibit No. 48 and ask you if that is a true copy of the leased equipment agreement under which your owner-operators operate?

A. That is.

Q. Mr. Lonskey, you were not in the hearing room when Mr. R. C. Cunningham of the United Transport testified a [fol. 3128] few days ago, were you?

A. I was not.

Q. Are you familiar with the operations of United Transport?

A. Yes, I am.

Q. In particular, are you familiar with the fact that they operate as a delivering carrier of motor vehicle traffic through the St. Louis gateway into southwestern territory?

A. Yes, I am, having interchanged traffic with them for a good many years.

Q. Your company has originated traffic at the Detroit origin moving into southwestern territory through the St. Louis gateway?

A. At Detroit and also Evansville, Indiana.

Q. Mr. Cunningham testified among other things that his company sometimes transported motor vehicle traffic from the St. Louis gateway to points in southwestern territory which could be served in direct single-line service by the originating carrier, but that the carriers preferred to transfer the traffic at the St. Louis gateway. Are you familiar with that practice?

A. I am.

Q. Does your company have authority to serve any points

in southwestern territory beyond St. Louis from Detroit in direct single-line service?

A. Yes, we have the State of Oklahoma, for example.

[fol. 3129] Q. Is your company, as an originating carrier, of the same opinion as Mr. Cunningham, that you wish to preserve the right of United Transport or any other motor carrier operating at the St. Louis gateway, of interchange of equipment on movements of traffic to points which each carrier can serve?

A. Yes, we are. We would like to continue the arrangement of interchange at St. Louis even though we are certificated to serve the State of Oklahoma.

Q. And roughly what are the reasons for that?

A. Well, principally it shortens up the haul. From Detroit to St. Louis is approximately 517 miles, which is approximately two ten-hour driving periods. If we continue to Oklahoma City, that would probably be two more, as it is almost the same distance. That way we get our equipment back into the point of origin more quickly and that shortens up our haul and makes a more efficient operation.

Q. Where your company interlines traffic or interchanges equipment at a gateway so that two-carrier service is performed instead of a single-carrier service, do you feel that that has any adverse effect upon the safety of the operation?

A. None whatever.

Q. Do you feel that it creates any abuse of operating authority that requires correction by the Commission?

A. None whatever.

Q. Insofar as the payment of rental compensation on [fol. 3130] a percentage of the revenue basis, do you feel that that has any effect upon the safety of operation?

A. I can see none.

Q. Can you think of any abuse in your branch of the industry that requires correction?

A. No, I don't know of any abuse from the rental standpoint.

Q. Are those the two principal points that impel you to be here as a witness?

A. That is true.

Q. That is, preservation of the payment of rental com-

pensation on a percentage of revenue basis and the opportunity to interchange equipment between certificated carriers at points of common service?

A. That is right.

Mr. Dixon: You may cross examine.

Cross-examination.

By Mr. Diehl:

Q. Mr. Witness, where are the headquarters of your company?

A. 9760 Van Dyke Avenue, Detroit 13.

Q. Is your experience in the field of motor transportation limited to automobile hauling?

A. It is from actual experience. Prior to my entering into this field, I was in the transportation field for a good many years as an industrial traffic manager.

Q. You haven't any recent experience in the field of trans- [fol. 3130a] portation of general commodities?

A. No.

Mr. Diehl: I have no further questions.

Mr. Nesbitt: I have no questions.

Cross-examination.

By Mr. E. K. Wheeler:

Q. Mr. Lonskey, what is the term of the leases with your owner-operators on this equipment?

A. It is a year. Of course, it is subject to cancellation.

Q. Thirty-day cancellation?

A. Yes. It continues on, at the expiration of a year, automatically.

Q. Was this agreement approved by the union at the time you entered into it?

A. Yes, sir. We have a National Joint Conference with the teamsters' union and I happen to be a member of that conference. It was approved by this conference.

Q. With the exception of this method of compensation provided in Rule 2 and the restriction on the interchange contained in Rule 3, I take it that you have no objection to

the rules set forth in the notice of proposed rule-making in this case?

A. Insofar as our particular company is concerned, we are vitally interested in those two items. However, we feel that we shouldn't be dictating what the rest of the industry requires.

Q. Mr. Lonskey, wouldn't it be perfectly feasible for you to make the payment to owner-operators dependent upon [fol. 3131] the poundage carried on each run?

A. In a sense that is what we are doing now.

Q. As a matter of fact, that is exactly what you are doing now so that it would not make any appreciable difference in your operation if different terminology were used in describing the method of payment?

A. If we can continue on as we are doing now, I don't care what terminology they use. If we had to do it in some other way it would probably entail a lot of bookkeeping.

Q. I assume also one of the factors would be the mileage covered, is that correct, the poundage and mileage really governing the rate? If the owner-operator receives a percentage of that rate those are the two governing factors?

A. It is automatic because the rates were constructed on a mileage basis.

Q. What percentage of your employees are owner-operators, approximately?

A. We have 205 units. That is 205 tractors and 205 semi-trailers. Of those tractors there is 195 of them that are owner-operated. The balance are company-owned.

Q. 105?

A. 195. Of course, as I said before, all of the trailers the company owns.

Q. Why do you own any tractors?

A. Well, prior to the war, we owned 80 or 90 per cent [fol. 3132] of them. I think it was proven that the owner-operator was far better than the company driver.

Q. What happened to the equipment, the tractors, that you had?

A. Before the war?

Q. Yes.

A. We sold them.

Q. To whom did you sell them?

A. Well, it is a long story. Most of our equipment that

we had in service prior to the war was converted into passenger carrying buses for governmental agencies such as the Navy and Army and Maritime Commission and so forth. We disposed of all that equipment in that manner during the war.

Q. Did you sell any of that equipment to owner-operators?

A. No, we didn't have any at that time. We weren't in operation because there was no movement of automobiles.

Q. Have you ever sold any tractors to owner-operators?

A. Yes, shortly after the war when tractors were very difficult to get we have been able to get some through our connections with the factory and have sold them to the drivers. The drivers are not compelled to buy from us. They can buy anywhere they see fit, but we were able to get delivery and they weren't.

Q. Do you finance that equipment?

A. We are on the paper. We sign it.

Q. What steps do you take to insure compliance with the [fol. 3133] ICC regulations by the owner-operators?

A. An owner-operator is no different than a regular company driver so far as our controlling him and enforcing the regulations. They are identical.

Q. I just wanted you to tell generally what steps your company takes to see that the ICC regulations are enforced.

A. Where do you want to start, in the very beginning?

Q. Yes, sir.

A. He has to, of course, get a medical examination. This is not a federal regulation, but he has to be trained in our student training. He has to comply with the hours of service and anything else that a regular company driver does.

Q. Do you have regular inspectors to check the compliance with hours of service regulations?

A. Yes, sir.

Q. And the logs?

A. Yes, sir.

Q. How about your equipment, what steps do you take to check that?

A. The equipment is inspected before each trip.

Q. Do you have your own shops?

A. Our own shops.

Q. And your own inspectors?

A. That is right.

Q. Are the owner-operators' trucks repaired in your shop?

[fol. 3134] A. No.

Q. They have to come in there for inspection before they go on a trip?

A. That is right.

Q. Do you contemplate putting into service the combination auto carrier and general freight equipment that is similar to that displayed by Bridgeways at the ATA Conference?

Mr. Dixon: Mr. Examiner, I think that goes beyond the scope of the examination. I don't think it is material.

Exam. Lawton: In what way is that related to the issues, counsel?

Mr. E. K. Wheeler: I was seeking to determine whether or not the method of operation which they presently employ was likely to be continued or whether they contemplated some change in their method of operation in the near future?

Exam. Lawton: Overruled. You may answer it.

The Witness: I don't know whether we contemplate any such thing. I know that there is such a thing in existence as a combination of general commodity and automobile hauler. I have seen it, but I don't know whether it is going to be made available to us. It is a development by John Bridge of Bridgeways and he hasn't indicated to us that he was going to make it available to us.

By E. K. Wheeler:

Q. Assuming for the purposes of my next question that he does make it available to you, would it be the policy [fol. 3135] of your company to adopt such equipment?

A. I can't answer that question.

Q. You haven't gone that far in the consideration of it?

A. That is right.

Exam. Lawton: How long have you been using this type of agreement in Exhibit 48? Did you state that?

The Witness: Mr. Examiner, I think we have used that since the war.

Exam. Lawton: Does that differ from the forms that you previously used?

The Witness: We always had a lease agreement similar to this, but I think this one has improved. The general terms, however, have always been almost identical.

Exam. Lawton: But this one is an evolution based on previous experience?

The Witness: That is right.

By Mr. E. K. Wheeler:

Q. Mr. Lonskey, assuming for the purposes of this question that such equipment was made available to you under some licensee arrangement or otherwise by Bridgeways, what would you think of a percentage of gross revenue as a method of compensation to drivers who were hauling automobiles one way and general commodities on the return trip?

A. I don't see where we, as an automobile transporter, can haul general commodities on the return. We have no authority to do that.

[fol. 3136] Mr. E. K. Wheeler: I have no further questions.

Exam. Lawton: Mr. Lordan?

Cross-examination.

By Mr. Lordan:

Q. You have 205 pieces of tractor equipment?

A. That is right.

Q. 195 of which are being operated by owner-operators?

A. That is correct.

Q. Who are maintained on the books of your company in effect as employees and paid a salary?

A. That is correct.

Q. And those 195 agreements or leases are for a long-term arrangement?

A. All of them are identical to that.

Q. And they are not any of them on a trip arrangement?

A. No.

Q. The adoption by this Commission of a rule which would require the certificate holder to have the driver of his equipment, whether owned or leased by him, on his payroll as an employee, would not affect your operation, would it?

A. It wouldn't affect ours. We have had it in effect for years and we like it; but I don't know what effect it is going to have on the other carriers.

Q. And the requirement that the lease of equipment be on some term basis would also not affect your operation, would it?

A. The same answer would apply to that.

[fol. 3137] Q. Mr. Lonskey, your operation is seasonal, I take it. I mean, it has peaks and valleys, does it not?

A. Very much so.

Q. There are times, I take it, during re-tooling processes or during periods when the automobile industry is not at full peak production that a great many of your pieces of equipment and hence your owner-operators are not constantly engaged by you?

A. Well, that is true. That is due principally to model changeovers. However, I think that is something that is being rapidly overcome. Most of the manufacturers are changing over from one model to another in a very short period of time. Our biggest trouble has been labor disturbances.

Q. I take it that the owner-operator probably has some expense during those periods of lay-off in order to garage and up-keep and maintain their tractors under insurance during those periods in which they are not employed?

A. I wouldn't say that there was much maintenance if he wasn't operating.

Q. Whatever expense he would be subjected to would be entirely his and there would be no compensation offsetting that and coming to him for the company for that?

A. That is correct.

Mr. Lordan: That is all the questions I have.

Cross-Examination.

[fol. 3138] By Mr. Todd:

Q. Mr. Lonskey, do you transport automobiles for a particular manufacturer?

A. Yes, we are a common carrier. Our principal business is from the Chrysler Corporation and its five divisions, namely, Chrysler, Dodge, DeSoto, Plymouth, and Dodge Truck.

Q. And the transportation of automobiles is a rather highly specialized service, isn't it, Mr. Lonskey?

A. Yes, it is.

Q. I mean aside from the specialized equipment it is a specialized service?

A. That is true. It is irregular and we consider it specialized.

Q. And you make deliveries direct to the dealer who retails the car to the general public, isn't that correct?

A. That is generally the plan, yes.

Q. In conducting this interchange at St. Louis, is there any difference between the type of service that the shipper receives from your company when you perform through transportation from Detroit to St. Louis to Oklahoma and when you perform simply the first leg of that journey from Detroit to St. Louis and then United makes the ultimate delivery from St. Louis to a point in Oklahoma?

A. No, it is identical.

Q. The same service?

A. Yes.

Q. Are you familiar enough with the general transportation within and without the Detroit area to have some knowl- [fol. 3139] edge of the itinerant trucker or gypsy operator?

A. You mean in the general commodity field?

Q. Yes, sir.

A. No, I am not familiar with that. I have heard a lot about the so-called gypsy operators, but I am not familiar with them.

Q. Are you familiar enough with the situation to know that that type of operation is in existence?

Mr. Diehl: I object, Mr. Examiner. He said he doesn't know anything about it.

Exam. Lawton: I don't think you should try to pursue it further. He said he doesn't know anything about it.

By Mr. Todd:

Q. Mr. Lonskey, does your company employ any owner-operators on a trip basis?

A. No, sir.

Mr. Todd: That is all I have.

Exam. Lawton: Mr. Pou.

Cross-Examination.

By Mr. Pou:

Q. Mr. Lonskey, did you hear the testimony yesterday of Mr. Smalley of Central Truck Lines?

A. I heard a good portion of it.

Q. I wonder if you saw an exhibit which was offered in connection with his testimony which was identified as Exhibit No. 41 and headed "Pay Scale for Trip Leases"?

[fol. 3140] A. Yes, I saw that.

Q. That provides, does it not, for an increasing rate of pay dependent upon the weight of load as well as on the mileage involved in the trip?

A. That is true. I think it provides for an increase in size of equipment, principally, and of course consequently the weight increases as you go down the list.

Q. Yes; I call your attention to the fact that it has perhaps 15 different rates on it and the first one reads "Loads up to 24,000 pounds, 17 cents per mile" and it goes all the way up to the last item which reads "Loads up to 40,000 pounds, 25 cents per mile," with a maximum of 25 cents per mile on any load. Would it be feasible in the event the Commission should forbid the payment of compensation for leased equipment on the basis of a percentage of the revenue, or would there be any serious or practical objection to your company instituting some such pay scale as this, or some such formula as this for compensating the owner-operator?

A. Well, it would be objectionable because of the amount of work involved and as I stated before, we are going to have to give these owner-operators the same amount of earnings tomorrow as we do today. We would have to find something that would work. That formula wouldn't work because the brackets are too far apart.

Q. I didn't mean to suggest these exact figures or rates, [fol. 3141] of course, because you are hauling something entirely different from the commodities hauled by central truck lines, but I did mean to inquire whether or not there would be any practical difficulty in your company establishing some such formula as that?

A. I think it could be done, but as I say, it would be very complicated and entail a lot of work.

Q. You mean clerical work, principally, and accounting difficulties?

A. Yes.

Q. But you think it could be done if necessary?

A. It could if we were forced to, yes. We object to it because we have, we think, the best formula there is today.

Q. Yes, sir.

You recognize, of course, that while there might not be any particular evil in your company using that formula, there might still be found some objection to the formula appearing on the basis of percentage of revenue on the part of some other carriers.

Mr. Diehl: Mr. Examiner, the witness has confined his experience and testimony and knowledge to the auto transport business and I object to him now, in response to Mr. Pou's question, stating anything about any other type of carrier in the industry. I think he has clearly confined himself to his own phase of the business.

[Vol. 3142] Mr. Lordan: The question didn't go, Mr. Examiner, to detailed knowledge of this man's part on what were the details of the other business, but only a suggestion by Mr. Pou that if there were difficulties in the other fields of activity.

Exam. Lawton: Read the question.

(Question read.)

Mr. Diehl: If he means other automobile carriers, I will withdraw the objection.

Mr. Pou: I was not talking about other automobile carriers. I asked him if he recognized that there might be objections on the part of general commodity carriers, to be specific.

Mr. Diehl: Then I press my objection on the grounds stated. The witness is not qualified to talk about anything but automobiles.

Exam. Lawton: Objection sustained.

By Mr. Pou:

Q. Mr. Lonskey, I believe you stated you did not hear Mr. Cunningham's testimony.

A. No, I did not.

Q. But you did state, I believe, that your company has on many occasions interchanged traffic with Mr. Cunningham's company which was United Transport?

A. Yes.

Q. At St. Louis and at Evansville?

A. No, I said that we interchanged at St. Louis on [fol. 3143] traffic originating in Detroit and Evansville.

Q. But destined to points in the southwest?

A. That is right.

Q. In cases of such interchange, I assume that you have reference to owner-oper-ted equipment transporting the cargo?

A. That is true.

Q. Does the owner-driver continue to drive the vehicle beyond St. Louis?

A. No, actually we have never interchanged any equipment to date at this interchange point. It has been interchange of the lading only.

Q. What happens to the lading? Is it unloaded at St. Louis and reloaded?

A. That is true.

Q. So the vehicle does not go beyond there, either the tractor or the trailer?

A. To this date it hasn't, no. However, there is considerable pressure being put upon the carriers by the shippers to eliminate that physical interchange.

Q. Do you know if some other automobile transporters do interchange equipment with United at St. Louis?

A. I believe that commercial carriers do, yes.

Q. My recollection is that Mr. Cunningham so testified.

A. Yes.

Exam. Lawton: This physical interchange in the case of [fol. 3144] automobile transporters is a relatively simple thing, isn't it? In about 15 minutes a man can drive the cars off his transporter and onto the other transporter.

The Witness: It will take a little longer than that to unload and to reload.

Exam. Lawton: But it only takes one man to do it, doesn't it?

The Witness: Yes, that is true.

Exam. Lawton: The vehicles move under their own power?

The Witness: That is right. But the shippers have objected quite frequently to that additional handling because of the possibility of damage.

By Mr. Pou:

Q. So that up to now you can say that your company has not interchanged this owner-driver equipment with United or any other carrier at St. Louis?

A. No, we haven't.

Q. You don't haul anything back from St. Louis to Detroit or from these other destination points to Detroit, do you?

A. No, we don't.

Q. It is always an emptry return movement, as far as you are concerned?

A. Unless there is something to come back. Occasionally we get some used cars to move back in that general direction, but that is infrequent.

Q. Nearly always a return movement is an empty move-
[fol. 3145] ment, as far as your company is concerned?

A. That is right.

Q. What about the owner-driver? Is he free to pick up anything that he may be able to get to haul back?

A. No, sir.

Q. You forbid that, do you?

A. We do.

Q. Do you police that in any way?

A. Yes, sir, we do.

Q. To see to it that the driver does not bring back any additional cargo?

A. We police it.

Q. Do your owner-drivers or do any of them, during the terms covered by your lease arrangement, ever have a similar lease arrangement or any lease arrangement with other carriers?

A. We don't permit it.

Q. In other words, you really mean, then, that this is for your exclusive use of his vehicle during the period covered by the lease?

A. That is true, and I think it says so in that agreement.

Q. Yes, it does, but I just wondered if there was any exception actually taken from it?

A. No, sir, there is none.

Q. Referring again to the lease which is Exhibit No. 48, does that provide in any way that the lessor shall be the [fol. 3146] driver of the vehicle?

A. No, it doesn't, but in our particular case, Mr. Pou, we don't permit anyone but the owner to drive that vehicle.

Q. Supposed he has leased the vehicle to you and it is loaded and ready to go and then something happens to him. Do you ever substitute a driver?

A. No, sir.

Q. This agreement provides also, I believe, that any damage to the cargo caused by the lessor can be deducted from the rental paid to him, is that correct, sir?

A. It is in a way. Countermanding that is our union agreement which prohibits us from deducting any more than $10 damage which may occur to any one particular load.

Q. That provision doesn't amount to a great deal, really, does it?

A. No, sir.

Q. What is the arrangement, Mr. Lonskey, when the lessor supplies the trailer tires on company equipment, if that is done? In other words, you own the trailers and all that you lease is the tractor?

A. Well, he furnishes the tires on our trailer.

Q. Explain that a little more for us.

A. Do you want to know why?

Q. Well, does he use the same trailer every time he makes a trip?

[fol. 3147] A. Yes.

Q. In other words, you have trailer number 17, for instance, designated for use by owner-operator number 17 all the time?

A. That is correct, and he has got his own rubber on there and it stays there. That is the only unit that he uses.

Q. Throughout the life of this contract?

A. That is right.

Q. That wasn't clear to me. You started to say why that was the case. Would you care to go into that?

A. I asked you if you wanted to know that.

Q. I would.

A. In our experience if the owner-operator doesn't own the tires on the trailer he never uses tractor brakes. He always uses the trailer brakes. Consequently, the rubber doesn't last very long.

Q. So it is a matter of protection to yourself and your tires. He would be more careful of his own tires than he would of yours, is that right?

A. That is right.

Q. As I understand your contract, you actually agree to pay him a percentage which is specified in the contract of the net revenue to the company on the cargo transported?

A. Gross revenue, sir.

Q. From that, in order to set up his wages, you deduct the standard wage for drivers and the difference between [fol. 3148] the percentage of revenue and his wages is set up and paid to him by a separate check as a rental of the vehicle?

A. That is correct.

Q. Suppose there is a general wage increase for truck drivers. Then what happens? Does the percentage go up?

A. If the union negotiates a higher percentage, yes.

Q. That means that you have got to increase the percentage in order to take care of it?

A. Yes.

Q. Otherwise he wouldn't be getting any more money even though he got a wage rate?

A. Well, it follows that if we give an increase in wages we must get an increase in revenue, so therefore our rates go up.

Mr. Pou: I believe that is all.

Mr. Diehl: I have a couple more questions, Mr. Examiner.

Further cross-examination.

By Mr. Diehl:

Q. Do you know of any breaking down of the rate structure in the motor vehicle transportation industry by reason of the fact that you use leased equipment?

A. No, sir.

Q. Does your company have its rates on the general level of the other people in the industry in which it is engaged?

A. We do.

Q. Has your company ever been convicted by the Interstate Commerce Commission of violation of its safety regu-
[fol. 3149] lations by reason of the use of owner-drivers?

A. We have not.

Q. Is your insurance premium, if you know, on a basis comparable to that of other people in the industry in which you are engaged, or is the situation because of the fact that you use owner-drivers?

A. I consider it low.

Mr. Diehl: Thank you.

Exam. Lawton: You are a party to the tariff of the ATA?

The Witness: That is true.

Further cross-examination.

By Mr. E. K. Wheeler:

Q. You said your insurance was low. Low as compared to whom?

A. I know of some competing companies that have to pay a higher rate than we do.

Q. Do those companies use owner-operators?

A. They have both.

Exam. Lawton: Have you made any computation as to the number of accounts per hundred thousand miles?

The Witness: I don't have it with me.

Exam. Lawton: But I gather it has been relatively low?

The Witness: Our experience has been very good.

Exam. Lawton: If there is nothing further, you are excused.

(Witness excused.)

Exam. Lawton: We will take a five minute recess.

[fol. 3150] (Short recess taken.)

Exam. Lawton: Come to order, please.

Let the record show that Mr. Lonskey was recalled to the stand.

O. G. Lonskey resumed the stand and testified further as follows:

Cross examination.

By Mr. Arpaia:

Q. Mr. Lonskey, is there any difference between your cost of operation and those of a man in your line of business who owns his own equipment?

A. I don't quite follow you, sir.

Q. You pay Social Security taxes, don't you?

A. Yes.

Q. Do you pay unemployment compensation taxes?

A. Yes.

Q. Do you have workmen's compensation?

A. Yes, sir.

Q. Do you carry public liability insurance?

A. Yes, sir.

Q. Do you keep these employees on your payroll as regular employees during the period of the lease?

A. Yes, sir.

Q. When Mr. Diehl asked you if you had any evidence of rate cutting in your industry, you don't use a man for one trip, do you?

[fol. 3151] A. No, we don't use a man for a single trip. It is under a long-term lease.

Mr. Arpaia: That is all.

Exam. Lawton: You are excused.

(Witness excused.)

Mr. Dixon: I will offer Exhibit 48.

Exam. Lawton: It will be received.

(Respondent's Exhibit No. 48, Witness Lonskey, received in evidence.)

Mr. Dixon: Mr. Examiner, that completes the testimony on behalf of the automobile transporters, but at the St. Louis hearing you may recall that Mr. Eldred requested that I proceed to present a letter which was written at the direction of the board of directors of the National Automobile Transporters' Association to Mr. Blanning setting forth the position of the association in advance of the proceeding and I told him that I would produce that. I have that document here and I would be glad to give it to Mr. Eldred. I don't think it was intended as an exhibit. It was not identified as any.

Mr. Lonskey: I have it, but I don't see Mr. Eldred here this morning. Possibly somebody would accept it for him.

Exam. Lawton: Off the record.

(Discussion off the record.)

Exam. Lawton: On the record.

Mr. Lordan, are you ready to proceed?

[fol. 3152] Mr. Lordan: Yes, I am ready to proceed.

WILLIAM A. STANCER was sworn and testified as follows:

Direct examination.

By Mr. Lordan:

Q. Mr. Stancer, will you state for the benefit of counsel and all present your name and address?

A. My name is Stancer, William A. I am Chief Engineer of the Department of Transportation of the State of Washington. I am also Chief of the field operations of that department in that state, the office being located in the Insurance Building at Olympia, Washington.

Q. You have been connected with traffic, transportation and highway affairs in the State of Washington for some years, have you not?

A. I have.

Q. And with the exception of the period during the war, have you for a period of at least ten years been so engaged?

A. Yes, sir, I have.

Q. I will ask you whether or not the administration of the field force of the Department of Transportation in the State of Washington, insofar as it relates to motor vehicular transportation for compensation, comes under your jurisdiction?

A. It does.

Q. Does the Department of Transportation—the Department of Transportation is the regulatory body in the State [fol. 3153] of Washington, isn't it?

A. It is.

Q. Does the Department of Transportation of the State of Washington have rules governing the leasing of motor equipment to its permit or certificate holders?

A. It does.

Mr. Lordan: I will ask the reporter to mark for identification this document entitled "Law, Rules and Regulations."

Exam. Lawton: It will be marked for identification as Exhibit 49.

(Intervenor's Exhibit No. 49, Witness Stancer marked for identification.)

By Mr. Lordan:

Q. The present statute governing the motor freight carrier operations in the State of Washington was passed in 1935, Mr. Stancer?

A. That is right.

Q. For how long a period of time has the Department, the regulatory body in the State of Washington, regulated the equipment by its permittees?

A. Under the provisions of the leasing rule, since 1935.

Q. At my request and as a means of preparing yourself to testify with relation to the issues involved in this proceeding, did you make a study and analysis of the Department's rule in that connection?

A. I did.

[fol. 3154] Q. Has the rule been subject to some alteration and change during that period of time?

A. Of a minor nature, yes.

Q. Calling your attention to the period before the war, I will ask you, Mr. Stancer, whether or not the rule that is presently in effect was, in effect, substantially the same?

A. It was.

Q. Did you investigate, as a part of your study and analysis of the Department's rules and its administration of those rules, whether or not there was any change in the rules coincidental with the issuance by the Interstate Commerce Commission of its administrative ruling No. 4 relating to the subject?

A. There was.

Q. What change was made at that time?

A. To make it more nearly conform to that ruling.

Q. Is it your understanding or do you understand, Mr. Stancer, that the declarations of principle set forth in that rule are to all extents similar to the administrative ruling No. 4 issued by the Interstate Commerce Commission?

A. Yes.

Q. Did the department relax its rule during the period of the war?

A. It did.

Q. When, if ever, did the Department go back to the enforcement of the present rule?

[fol. 3155] A. In June of 1946.

Q. What are the main provisions of that rule with relation to, number one, the driver of the vehicle being an employee of the permittee of the Department of Transportation?

A. That, of course, is one of the requirements. The driver must be an employee.

Q. Are short-term or trip leases authorized or permitted under the Department's rules, Mr. Stancer?

A. They are not.

Q. You have been in charge of the active field force in charge of the administration of this rule, have you not?

A. I have.

Q. Has the Department experienced any difficulty with relation to the administration of this rule in a practical way upon the highways of the State of Washington?

A. We have not.

Q. Will you explain in as brief and short a manner as you can the method adopted by the Department and administered by you and the field force in the handling of this situation in the State of Washington?

A. You mean as far as submitting an approval of the leases and the operation of the equipment on the highway?

Q. Yes.

A. The rule, of course, provides that the lease that is to be entered into by the interested parties must be submitted [fol. 3156] to the Department for its approval, after which, if it does meet that approval, they are so notified and upon payment of the necessary fees, the regulatory and plate fees, the operator, whoever he may be, may legally operate under the provisions of that lease. So that it might not be burdensome or cause undue delays in connection with what might be certain emergencies that would require augmented equipment, the Department's agents who are strategically located throughout the state and who are aware of the provisions of the rule may themselves pass upon whether or not the lease submitted is acceptable.

They may, at that time, of course, receive the fees that are required and may so advise the operator that he may legally operate under the provisions of the lease as submitted.

Q. How is the actual field work conducted in connection with this matter, Mr. Stancer?

A. You mean in connection with the enforcement?

Q. Yes.

A. Well, of course, the vehicles that are under lease are required to carry a copy of the lease on the vehicle. Our state has a certain number of enforcement agents who are on the road continually. We operate in conjunction with the State Patrol. There are some 16 scale houses in the state at which points the commercial vehicles are required to enter. At those points in addition to others away from those scale houses, the vehicles are actually checked as to [fol. 3157] compliance with the law and in the case of leased vehicles they are checked as to whether or not the lease has been approved and if it is on the vehicle.

Q. Prior to your attendance at this hearing have you met

with various associations and agencies of the motor freight industry on the subject of these proposed rules?

A. At the request of the Washington Motor Transport Association, I met with that group at their regional meeting in Portland, which was attended by Mr. Boot and Mr. Lillienquist and sat through those proceedings.

Q. And have you attended other meetings of the common carrier motor freight industry in the State of Washington relative to the same thing?

A. At a very recent meeting called in Seattle by the Military Forces and the Washington Motor Transport Association, I was again invited to be present and to inform them of the provisions of the Washington law, particularly covering interchange of vehicles and leasing of vehicles.

Q. As a result of those meetings and your general experience in the Department in the field in which you are authorized and delegated to act, Mr. Stancer, are you aware, as a result of such meetings, what the general sentiment is with relation to this leasing practice among the common carriers of the State of Washington?

A. As expressed to me by those people who attended [fol. 3158] those meetings, yes.

Q. What is that attitude and position?

A. Well, the carriers who are under our jurisdiction and whom we come in daily contact with are not in favor of trip leasing. We don't permit it within the state. Their expressions are that they are not in favor of that nor do they want it. They are, as near as I was able to determine, to a man, opposed to a division of revenue in the arrangement for the payment for the use of the equipment in leased service.

Q. What is their attitude with relation to whether or not the driver of the equipment should or should not be an employee of the carrier?

A. All that I have been in contact with are of the opinion that the driver should be an employee of the carrier.

Q. And that is in the field of compensated industry in the State of Washington?

A. It is, sir.

Q. Mr. Stancer, you have been present at the proceedings practically all the time, at least this week, have you not?

A. I have.

Q. Have you heard discussions here relative to the use of equipment leased by Hertz drive yourself equipment or Hertz U-Drive equipment?

A. I have.

Q. Have you had any experience in the State of Washing-[fol. 3159] ton relative to the equipment leased by that concern?

A. I have.

Q. In your official capacity, have any of those matters come before you?

A. They have.

Q. Will you explain what they were and how they have been handled?

A. One carrier in the City of Seattle made a request of the Department that he be permitted to use certain equipment that was to be leased from the Hertz Company. He was advised, of course, to submit the lease to the Department for its approval. The standard Hertz lease was submitted and it was not acceptable. We so advised the carrier and the Hertz people. The Hertz people made arrangements for their attorney to confer with the Department to learn the Department's wishes and requirements in connection with those leases and their standard form of lease was rewritten to comply with the Washington regulations. In the case of the carrier that I cite, he is using that equipment under the revised Hertz lease and it does meet the Washington requirements.

Q. Have you had any experience with relation to the movement of household goods in the State of Washington on leased equipment?

A. I have.

Q. Will you explain what that situation is?

A. The household goods carriers, of course, have a peculiar problem all their own which has been recognized [fol. 3160] by the state. In conferences that have been arranged with those carriers, a procedure has been arranged whereby they are not unduly restricted in their operation in the state.

I might cite as an example the arrangements that were made with Mayflower, Allied, United, North American, and I am not sure about Ford Van Lines. They do follow the procedure, but there is one exception. They do not submit the listing that I am going to speak about.

Mr. Lieberman: May I interrupt and ask whether this description relates to intrastate movements?

The Witness: Interstate.

Mr. Lieberman: Thank you.

The Witness: These people at the beginning of the year, or whenever a new piece of equipment is added to their list, supply the Department with a listing of that equipment by make, model, serial number, motor number, and their own equipment number. The Department has that on file. If the carrier determines that a piece of that equipment is to be dispatched into the state, previous to his entering the state, a telegram is sent to the Department advising the Department that the equipment will enter, that the fees are in the mail, and requesting the Department to send a telegram to some point outside the state addressed to the particular driver, who picks it up and that driver enters the state, and that is his authority to travel while he is within [fol. 3161] our territory.

Q. From your experience in the administration of this rule and its enforcement in the State of Washington, do you know of any serious difficulty arising by way of delay of cargo or lading in any event by the administration of this rule?

A. I do not.

Q. Is there any application before the Department or has there been at any time within the last two years for any modification of the rule which is now effective?

A. There has not.

Q. Do you know of any petition on behalf of the carriers desiring such a change?

Exam. Lawton: Has there ever been a court test of your leasing regulations?

The Witness: Not that I know of.

Mr. Lordan: I have no further questions. You may cross examine.

I want to make one statement in connection with this witness' statement, and I will read the applicable statute involved, if I may. I will refer to it by reference to the Washington law. Under the provisions of Section 33, Chapter 184 of the Laws of 1935, the State of Washington, which is a part of its motor freight carrier statute, the legislation of the State of Washington has provided: "The Department is hereby authorized and directed to cooperate with [fol. 3162] the federal government and the Interstate Commerce Commission of the United States and any other commission or organization delegated or authorized to regulate interstate or foreign commerce by motor carriers to the end that the transportation of property by motor carriers, interstate and foreign commerce, into and through the State of Washington may be regulated and the laws of the United States and the State of Washington enforced and administered cooperatively in the public interest."

By Mr. Lordan:

Q. Mr. Stancer, one further question occurs to me. Do you work with the field force of the Bureau of Motor Carriers?

A: Very closely.

Q. Are they aware of your periodic field inspections and do they supply you with information?

A. They do.

Q. Do you supply them with information relative to the net effect of those checks?

A. I do.

Q. The arrangement has been very harmonious and cooperative?

A. Most harmonious.

Mr. Lordan: Thank you. That is all.

Exam. Lawton: You may cross examine.

Mr. Diehl: I would like first, if possible, Mr. Examiner, to check this. The witness was asked by you if there has been a court test and he said he didn't know. I wondered [fol. 3163] if his counsel could tell us that.

Mr. Lordan: Not to my knowledge.

Mr. Diehl: Thank you.

Mr. Lieberman: Along those lines, may I make another inquiry?

Mr. Diehl: Yes.

Mr. Lieberman: How long has this statute been on the books requiring leasing under the conditions set forth by the witness?

Mr. Lordan: This is not a statute, in order to make it clear. This is a regulation of the Department of Transportation of the State of Washington and as indicated in the copy, it is a rule. Of course, in its general law, the Department of Transportation has the authority to issue rules and under such authority has issued the rule in question.

Exam. Layton: There is no specific statute, however, which governs it?

Mr. Lordan: No, there isn't.

Mr. Lieberman: May I inquire, how long has this particular leasing rule been effective?

The Witness: Substantially the same as it is now since 1935.

Mr. Lieberman: In other words, prior to the enactment of the Motor Carrier Act?

The Witness: Yes.

[fol. 3164] Mr. Lieberman: Thank you.

Cross-examination.

By Mr. Diehl:

Q. Did I understand you, Mr. Witness, in connection with the operation of household goods carriers, to say that this rule applied to them and that you had some arrangement whereby they could telegraph and get authority to come into the state with leased equipment?

A. Yes, or their own equipment, either one. Equipment operated by them.

Q. Would your regulation cover a movement by common carrier of commodities generally between California and your state?

A. Yes, within the state.

Q. I understand you, then, that if a carrier domiciled, we will say, at San Francisco has a trip lease with an owner-operator who is going to haul a load for him from San

Francisco to Seattle, that he couldn't legally come into your state without first securing your approval under these rules. Is that right?

A. Yes, that is what we do.

Q. Can you tell me, Mr. Witness, how many interstate carriers, if you know, that is, carriers who operate physically beyond the confines of your state but are domiciled there, hold authority from the Interstate Commerce Commission?

A. I couldn't give you the exact number. I haven't made a tabulation.

[fol. 3165] Q. Your approximation will do, if you have one.

A. I wouldn't give you an approximation. A large number, possibly 40 per cent of them, have interstate rights.

Q. I was trying to get at, first, a number and then I can deduct from your percentage or by the use of your percentage but I don't have any number to start with. Perhaps I didn't make it clear. How many carriers holding authority from the Interstate Commerce Commission are domiciled within your state and whose operations are physically conducted through and beyond the confines of your state?

A. I don't have a tabulation on that.

Q. How many carriers are subject to the regulations of your Commission?

A. We have approximately 3200.

Q. Are those all carriers who hold some form of intrastate authority from your Commission?

A. Yes. All interstate carriers operating in our state have a permit issued by us.

Q. Do you require a showing of public convenience and necessity by a carrier before he can operate in interstate commerce through your state?

A. In some cases, yes.

Q. Then your statute requires something more than the mere licensing of an interstate carrier, is that right?

A. That is right.

[fol. 3166] Q. Do you know if that position has ever had a court test?

Mr. Lordan: I don't think the witness knows.

Mr. Diehl: I will take your answer, Mr. Counsel, if you can give it to me.

Mr. Lordan: The State of Washington, I think, under authority of Buck vs. Kuykendahl has no authority to require a public convenience showing before it could grant an interstate permit.

Mr. Diehl: I am familiar with the textbook which you cite, and I am sure that all people who have studied law are familiar with it, but this witness is testifying here about what your requirements are and that is the reason I wanted to ask him that question.

Mr. Lordan: I don't think the witness is clear on that point. The Department has the power to deny permits, but I doubt very much if it has the power to deny interstate permits nor do I think it denies them.

Mr. Diehl: Well, perhaps I can ask counsel one more question that might help me. Do you think you have the power to require compliance by an interstate carrier of your trip lease provisions before he can come from San Francisco into Seattle in the example which I cited to your witness?

Mr. Lordan: If it affects the public safety of the people who are driving upon the highway in the State of Washington, I think the regulatory body of the State of Washington has that jurisdiction and power.

[fol. 3167] Mr. Diehl: I am, of course, aware of the fact that your state has the power over its highways.

Exam. Lawton: Let's not have that continued colloquy between counsel.

By Mr. Diehl:

Q. Calling your attention, Mr. Witness, to Exhibit 49 and specifically paragraph four relating to the extension of the scope of a permit by the leasing of equipment, can you tell me just what that is supposed to cover?

A. That, of course, would be under the heading of what might be termed the leasing of rights rather than the leasing of equipment, a carrier leasing the particular equipment and not having the rights in the area and attempting to circumvent his limitations by that action.

Q. Would this prevent an authorized carrier from interchanging equipment with another authorized carrier for use over the routes of the latter's certificated rights?

A. You mean both having the same rights but both not covering the same territory?

Q. Both having rights, but the rights don't coincide as to the scope and routes.

A. Providing they both have the rights as far as commodities are concerned, but not having the rights as far as territory is concerned, they may interchange equipment. That is not done under the leasing agreement, but under an interchange agreement.

[fol. 3168] Q. Then your state permits the free interchange of equipment between carriers within the state?

A. With a filing of an agreement with the Department which, upon its approval, does permit that practice.

Q. But that has to be obtained prior to the indulgence by certificated carriers in the interchange of equipment?

A. That is right, but again so that it may not be an undue burden, the Department's agents located at various places throughout the state are authorized to approve those in an emergency.

Q. Calling your attention to paragraph five relating to the leasing of equipment for a period of longer than ten days, do I understand that insofar as your state is concerned any carrier who leases a piece of equipment for more than ten days is presumed by your state to be the owner insofar as responsibility for the operation of the unit is concerned?

A. He is shown as the registered owner and not as the legal owner. In our state many vehicles are shown as a dual-ownership, a registered owner and a legal owner.

Q. So far as your state is concerned and its enforcement officers, you look to the registered owner who has the certificate and it is his responsibility and not the owner of the equity in the equipment, is that right?

A. That is right.

Q. I notice in the next paragraph that a provision in this rule governs the termination of lease and contains a [fol. 3169] proviso that they shall not be terminated unless on five days' notice to the Department. Do I under-

stand by that that two parties to this contract can't, by mutual agreement, rescind it without notice to anybody?

A. That is the provision of the rules.

Q. Is that your understanding of what the rule requires?

A. Yes, sir.

Q. Do you know, Mr. Witness, how many enforcement officers your state employs?

A. I have 32 and the commercial vehicles section of the State Patrol which works very closely with us—we work together continually—have about 50.

Q. Can you tell me, Mr. Witness, through the cooperation of your various state agencies, are the 32 and the 50 people which you have mentioned here, making a total of 82, authorized to enforce such provisions of this law where violations may come to their attention, or this rule rather than the law?

A. They are required to by the law.

Q. So the State of Washington, in enforcing this, has a minimum of 82 enforcement officers?

A. That is right, who are primarily concerned with the commercial vehicles, hauling for compensation. They have other officers too who from time to time assist, but the commercial vehicles section of the State Patrol, plus the 32 that we have, have as their primary duty commercial vehicles.

[fol. 3170] Exam. Lawton: How many carriers do you have?

The Witness: We have 3200 permits, approximately.

By Mr. Diehl:

Q. In the figure of 82 which you have given me for enforcement officers, does that include the State Highway Patrol?

A. Well, the commercial vehicles section of the State Patrol is the State Highway Patrol,

Q. Are there any State Highway Patrolmen who are not included within the number which you have given me here is what I was asking you.

A. Oh, yes, there are a large number of patrolmen other than those in the commercial vehicle section.

Q. Is it one of the duties of all of those patrolmen to as-

sist in the enforcement of the laws and the rules and regulations established by the department?

A. That is in the law. However, they have their patrol department listed and they specialize on certain types of traffic.

Q. I appreciate that they have other duties, but any violation of this regulation that comes to the attention of a Highway Patrolman, it is his job to do something about it, isn't it?

A. That is right.

Q. How many Highway Patrolmen do you have?

A. I don't know. There has been recently a change made in their number and I don't know how many there are.

[fol. 3171] Q. Are you familiar with the offices of the Interstate Commerce Commission in the State of Washington?

A. Yes.

Q. How many offices are there?

A. Two.

Q. Do you know how many employees are assigned those offices by the Interstate Commerce Commission?

A. Permanently assigned I believe there are one in each of the offices. There are some clerical and stenographic people, I believe, but I mean supervisors.

Mr. Diehl: That is all the questions I have. Thank you, sir.

Cross-examination.

By Mr. E. K. Wheeler:

Q. Do the 82 officers to which you refer have other duties than the enforcement of Rule 40?

A. Yes, many others.

Q. Does the failure of the Interstate Commerce Commission to enforce rules similar to those in effect in the State of Washington adversely affect enforcement of your own regulations?

A. Due to the length of time that the rule has been in effect and the way that it has been forced and with the cooperation that we have received from the Interstate Commerce Commission, we have had no particular difficulty up to date in enforcing the provisions of this rule.

[fol. 3172] Q. Would it be helpful to you and the Department of Transportation of the State of Washington?

A. For the purpose of securing uniformity and, of course, continued stabilization of the industry in that area it would be very helpful if the rules were uniform. It might in some cases impose an undue burden on the carrier in that he might have to comply with one set of regulations in one place and another in another, or a combination of them both, so that uniformity is desirable and it is, of course, hoped by our state that the rules that may be adopted will be uniform and that they may be applicable and not too much at variance with ours.

Q. Is it the position of the Department of Transportation that the requirements and prohibitions of your Rule 40 are the minimum necessary to the elimination of unsound methods of transportation and practices on the highways of the State of Washington?

A. That is our position.

Q. Is the same true with respect to safety?

A. Yes, definitely.

Q. You spoke of attending conferences of the motor carriers of Washington who stated that they were opposed to trip leasing. Can you give any of the reasons therefor?

A. I wish to very briefly qualify that. The statements I give are in the conversations with those men at those meetings and they are not statements that may have been made [fol. 3173] by the organization which might be produced, but they are the statements and discussions with those particular men. As far as trip leasing is concerned, there are a lot of views in connection with that. Some of the carriers have expressed this view, that it does unduly penalize the man, of course, who has made a substantial investment in his equipment as against the individual who might trip lease and not own the equipment. There have been views expressed along that line. The matter of placing of the responsibility of operation on the highways, of course, is one with which they are concerned and with which we are concerned.

Those are, of course, the two principal things. We definitely want to know who is responsible for the operation of

that equipment while it is on the highway and consequently a certain amount of safeguards have to be provided so that we may determine that and adequately police it.

Q. Can you give me the same information with respect to compensation of lessors on a percentage of the revenue basis?

A. Well, in connection with that, this view has been expressed and we are inclined to agree with it, that if the revenue is sufficient that it may be divided and both of them apparently profit by that arrangement, possibly the rate needs to be examined. It may be too high.

Q. Can you give me the same information with respect to the employment of non-employee drivers?

[fol. 3174] A. Of course, the matter of hours of service. We have an hours of service regulation that is a little stiffer than the ICC. The only way we believe that you can adequately check hours of service is from payroll records.

Q. Do you believe that the adoption by the Interstate Commerce Commission of the same or similar rules to those which are embodied in your Rule 40 would further the reciprocity between the states?

A. I do.

Mr. E. K. Wheeler: I have nothing further.

Cross-examination.

By Mr. Todd:

Q. As a regulatory official, wouldn't you say that uniformity not only in the matter of leasing, but in sizes and weights and other laws and regulations that govern motor carriers would be a desirable situation?

A. I would.

Q. And does such uniformity exist among the several states at this particular time?

A. I don't believe that it does. I think we come nearer to uniformity in our coastal states than we do in some other places. I would have to examine the record. I have spent some time on that as a traffic engineer of our state, but I am not prepared to make a comparison between our state and others at this time. We do have a uniformity,

a very close uniformity between California, Oregon and Washington.

[fol. 3175] Q. And that uniformity in all of these matters has been helpful?

A. It is very desirable.

Mr. Todd: That is all I have.

Mr. Pou: I have no questions.

Exam. Lawton: Mr. Boot?

Cross-examination.

By Mr. Boot:

Q. Mr. Stancer, do you have any jurisdiction over private carriers in Washington?

A. We do not.

Q. Do you have any jurisdiction over what are commonly known as exempt carriers, carriers of exempt commodities?

A. We have not exempt commodities. If they are commodities hauled for compensation, they come under our jurisdiction.

Q. In other words, an interstate commerce of exempt commodities would come under your jurisdiction?

A. We require him to comply with our regulations.

Q. So the figure of approximately 3200 carriers which you gave would include these carriers of exempt commodities?

A. Who might be in interstate commerce and they are hauling those commodities, yes.

Q. You ship a lot of apples out of Washington, don't you?

A. That is right.

Q. And other agricultural products?

A. That is right.

Q. I believe you said also approximately 40 per cent of [fol. 3176] them were interstate commerce carriers?

A. That is a figure from the air, Mr. Boot. I could make a tabulation but just making a very quick comparison of those that I can call to my mind at the time—and I have a pretty fair idea throughout the state—I think that would be pretty close. Less than half of them.

Q. Then that would give you around 1200 interstate carriers?

A. That is right.

Q. Of those approximately 1200, how many would you say are Washington carriers as compared with those coming from Montana, Idaho and other states?

A. Without making a tabulation, Mr. Boot, I wouldn't be in a position to say.

Q. You have talked to quite a few carriers up there and stated in your testimony that generally they were against trip leasing and against paying compensation. How many carriers would that represent that you talked to?

A. You might answer that somewhat by the group that represented the regional conference in Portland. How many did they represent? I don't know.

Q. Would your testimony in that be restricted to those represented at the Portland conference?

A. No. For example, as you will recall, the oil haulers were opposed to any leasing.

Q. Were the oil transporters represented at that meeting?

[fol. 3177] A. Yes, by Andy Anderson.

Q. Do you know of any subsequent meeting that the committee had with the oil transporters?

A. Yes.

Q. Were you there?

A. I have a statement from their attorney on it.

Q. Do you know off-hand how many other states have a rule similar to Washington's?

A. I have glanced over the tabulation that has been made by Mr. Blanning, but I have made no tabulation in connection with it.

Q. If this Commission, in its final rules, would permit trip leasing and permit paying on a percentage-wise basis for the sake of uniformity, would Washington change their rules to comply with that?

A. I am not prepared to say.

Q. Would you recommend such a change?

A. Personally?

Q. Yes.

A. No.

Q. Under your laws in Washington, do you hold the carrier responsible for the vehicle on the road or the driver?

A. The carrier.

Q. Would it make any difference, then, whether that is leased equipment or owned equipment, insofar as responsi-
[fol. 3178] bility goes?

A. The provisions of the rule require that any leased equipment be properly identified with the carrier leasing it so that the responsibility can be placed.

Q. My question is, would there be any difference, then?

A. There might be.

Q. In what way?

A. Well, that would be according to the provisions of the rules that might be set up.

Q. You look to the carrier, though, in every instance for responsibility?

A. Oh, yes.

Q. There is no way the carrier can avoid that?

A. Well, there might be, yes. That is what we don't want to happen.

Q. How?

A. The matter of trip leases with improper identification of the vehicle, the improperly registered ownership of that particular vehicle or whatever it may be. There might be a number of circumstances that would govern it.

Q. Where the vehicle wasn't properly identified that would be a violation of another rule and regulation, wouldn't it?

A. Well, under the circumstances you recite, it might not.

Q. It would at least be a violation of the Commission's rules in interstate commerce, would it not?

[fol. 3179] A. If those rules were put into effect, yes.

Q. Presuming they have a rule providing for identification of equipment?

A. Yes.

Q. Generally speaking in the northwest do they use large truck trailer equipment in interstate commerce?

A. Up until very recently a large percentage of the interstate traffic has been full truck and full trailer. There is a movement on foot at the present time to change that

materially to tractor truck-semi-trailer combinations, one very large carrier particularly having changed over all of his equipment in the last ninety days.

Q. Do you know whether or not that is a very expensive type of equipment, either what is being converted or what was used before?

A. Oh, yes.

Q. Have you any idea as to what a unit would cost?

A. Yes.

Q. What would you say it would cost?

A. Well, those units cost anywhere from—I am thinking of some in particular at around $7,000 up to $21,000 and $22,000.

Q. That would more or less be a detriment also for owner-operators, would it not? It is rather hard for them to afford such equipment.

A. I am not in a position to say, not being an owner-operator.

[fol. 3180] Mr. Boot: That is all.

Exam. Lawton: Mr. Lieberman?

Cross-examination.

By Mr. Lieberman:

Q. Of the 3200 carriers certificated or permitted by your Commission, how many are household goods carriers?

A. I don't have a tabulation. I didn't prepare it. I could do it.

Q. Could you give us some estimation?

A. No, I could not.

Q. You don't know approximately how many household goods carriers you have in your state?

A. No. I wouldn't want to give you any figure without making a tabulation. I would be glad to do it, though, and send it to you. We have a great number of carriers who have dual rights within that particular area who do have household goods contained in their rights. For example, one of them under general commodities also has household goods.

Q. The great majority of household goods, however, only

possess household goods carrier rights in your state, is that not a fact?

A. I believe that is true.

Q. You made a statement on direct examination that the household goods movers have peculiar requirements in connection with their business?

[fol. 3181] A. That is right.

Q. By that I assume that you recognize that the household goods transportation is different from that of general commodity carriers and other types of carriers?

A. We have recognized that difference in arranging for these expedited procedures in permitting them to operate within the state.

Q. Directing your attention now solely to carriers of household goods operating within the State of Washington, do the provisions of Rule 40 leasing apply to those carriers?

A. Yes.

Q. Do any household goods carriers hold permission from your Commission to pay for the leasing of a vehicle on a percentage of revenue?

A. We don't permit it. We will not approve a lease prepared and containing that provision.

Q. Do you know whether any exceptions have been made to your leasing rules?

A. I don't know of any.

Q. Are all interstate household goods carriers required to submit in advance the lease form used by them?

A. And they do. We have a file of Mayflower, Allied, United, and all of those who may have leased vehicles. Those are filed with the Department.

Q. Do you know whether or not such carriers provide [fol. 3182] that compensation for such leasing of vehicles be on a percentage of revenue?

A. It doesn't appear in the lease.

Q. It does not appear in the lease? I didn't understand your answer.

A. I say it doesn't appear in the lease if it does so provide, because we examine them for that.

Q. Don't your rules provide that the method of compensation be set forth in the lease?

A. That is right.

Q. Don't you know of your own knowledge that it is a uniform practice, practically, with the long distance carriers to pay lessors of vehicles on a percentage of revenue basis?

A. I haven't personally run into that in connection with this. They deny that it is being done that way when we question them on it.

Q. Is it your testimony that Aero Mayflower Transit Company denies that they pay for leasing of vehicles on a percentage of revenue basis?

A. They have been in our office rather recently and they tell us that they don't do it that way.

Q. And would your answer be the same with respect to the other so styled long distance companies?

A. As far as I personally know.

Q. What is the extent of your personal knowledge?

[fol. 3183] A. The contract with those carriers in connection with the enforcement of those regulations within the state.

Q. Within the state?

A. That is right.

Q. Does Allied Van Lines operate within the State of Washington?

A. Yes, sir.

Q. Do they hold operating authority from your commission within the state?

A. Yes, they do.

Q. Do any other long distance companies hold such operating authority within the state?

A. Yes.

Q. Is it your testimony that none of their leases provide for compensation on a basis of a percentage of revenue?

A. Those that they have filed with us do not.

Q. Have you approved interchange contracts which permit the interchange of complete tractor-trailer units?

A. No, just the trailer.

Q. Do you recognize that the transportation of household goods does not lend itself to physical interchange?

A. I would qualify it. I think that it is possible to interchange trailers. It is probably not convenient.

Q. Can you tell us how many such special permits have been granted to household goods carriers for interstate re-

movals either into or out of the State of Washington for any given period?

[fol. 3184] A. You mean interchange agreements?

Q. No, I am directing your attention now to the special procedure which you outlined for interstate household goods transportation by movers. I would like to know, if you can tell us, how many such permits you issued during any given month of this year.

A. I don't have that tabulation. I can make the tabulation and supply it to you, but I don't have it. Of course, after the first time that they have come in and have complied with the law, during the current year secured the necessary plates and fees, they may come back and forth in there many times of which no tabulation would be made except as they would be checked at a scale house.

Q. I don't understand the provisions of the rule. Let us take any carrier with whom you are familiar. Does North American Van Lines operate into your state? North American has several hundred vehicles under lease to them. Assume that they register with your department all of the vehicles. Is it then necessary for them to obtain special permission from you on each trip either into or out of the State of Washington?

A. After the first trip in, in which they comply with those provisions, pay the necessary fees and secure the plates for the current year, they do not.

Q. I don't presume that North American has qualified some 300 vehicles to operate into or out of the State of [fol. 3185] Washington as a practical matter.

A. They generally qualify quite a large block of them that may be expected to and then if others come in at a later date, they supply the necessary information.

Q. Then in respect of those vehicles which have been registered with you, there is no necessity for obtaining these special permits, is that correct?

A. Oh, no, any vehicle that comes in there would get the permit, but after they come in the first time during that current year, they don't need to go through that procedure again.

Q. In other words, if they have a block of 30 vehicles, must they obtain at least one permit for each of those

thirty vehicles before they can enter your state again without obtaining special permits?

A. They don't obtain a plate or pay the fees on any of them until one of them comes in. As the vehicle comes in the plate is issued to a particular vehicle and the fee is paid. That vehicle may enter the state as many as a dozen times after that.

Q. Without notification to you?

A. Oh, yes. It is just the first time in for the current year for that particular vehicle.

Q. You made reply to one of the questions on cross examination that you believe that the only complete check [fol. 3186] which you have on the hours of service is by checking payroll?

A. That is right.

Q. If a carrier had an arrangement with his employees to pay a so-called flat wage per week regardless of the number of hours worked, would his payroll records be of any assistance to you in checking hours of service?

A. It would be very difficult to check them.

Mr. E. K. Wheeler: Mr. Examiner, I am going to move to strike the last question unless there is some indication that there is such an arrangement.

Mr. Lieberman: I will withdraw the question very gladly.

By Mr. Lieberman:

Q. Do you know whether any motor carrier within the State of Washington operates under a union contract?

A. I don't know of any of the commercial vehicles, haulers for hire, that aren't.

Q. By that do you mean that all 3200 carriers are under contract with a labor union?

A. No, not necessarily. There are a number of individual carriers, one-truck operators who might not be.

Q. And as to those one-truck operators, if they are not members of a union, that is, their employees are not members of a union, there could be an arrangement such as I have described of a flat wage per week?

Mr. E. K. Wheeler: Mr. Examiner, I object. How can a man be his own employee?

[fol. 3187] Mr. Lieberman: He stated, if I may reply, Your Honor, that they are one-truck operators. He did not state that they operated their own vehicles. Of necessity a one-truck operator need not drive his own vehicle.

Exam. Lawton: That is possible.

Mr. E. K. Wheeler: May we have clarification of that? I think the question is confusing.

Mr. Lieberman: Well, we will ask that question again.

By Mr. Lieberman:

Q. Mr. Stancer, in your experience, are there not one-truck operators who have employees either to drive or act as helpers in the State of Washington?

A. Who have one employee?

Q. One or more.

A. Yes, many of them.

Q. As to those operators, do you know whether or not each and every one of them operates under a union contract with its employees?

A. I am not qualified to answer whether or not they do or do not.

Exam. Lawton: In other words, you don't know?

The Witness: I don't know.

By Mr. Lieberman:

Q. If such an operator had no union contract or no provision in a contract that payment be on an hourly basis, you could not, from its payroll records, check the hours of service rules of your commission and its compliance or noncompliance by that carrier?

[fol. 3188] A. If the number of hours worked were not shown, no.

Q. You have been engaged in the same type of activity with the state commission that you have described here, namely enforcement, is that correct?

A. That is correct.

Q. Have you been with the commission prior to ten years ago in another capacity?

A. At various times for short periods, yes.

Q. In what capacity, sir?

A. As an engineer. I have also been the traffic engineer of the State of Washington.

Q. Would any of your duties in that connection relate to compliance by carriers with the state statute and the commission rules?

A. I had charge of the original installation of the scale house operations in our state which had to do with commercial vehicles.

Q. Based on your ten years with the commission in the enforcement section, I believe you said, would you say that it would be possible for your commission to effect compliance by carriers with your rules and regulations if you only had half a dozen enforcement officers?

A. Well, not having worked under those circumstances, I don't know.

[fol. 3189] Q. Based on your experience, would you say it is at all possible to do that?

Mr. Wheeler: Mr. Examiner, I object as arguing with the witness. The witness has stated he doesn't know.

Mr. Lieberman: I respectfully submit, sir, he has been introduced as an expert and I think we are entitled to have his opinion.

Mr. E. K. Wheler: When the witness says he doesn't know, what are you going to get from him?

Mr. Lieberman: I am asking him for his opinion. Does he believe that with six enforcement officers he would be able to effect compliance?

Mr. E. K. Wheeler: Mr. Examiner, the witness has stated that he has had no experience. How could he have an opinion?

Exam. Lawton: It wouldn't be a very worthwhile opinion.

Mr. Todd: I respectfully submit we are wasting a lot of time.

Mr. Lieberman: I respectfully submit I am entitled to cross examine this witness without any comment as to whether it is a waste of time or not. I resent that.

Exam. Lawton: He has no opinion, he says.

Mr. Lieberman: Is that his answer?

Exam. Lawton: That is his answer.

By Mr. Lieberman:

Q. How long has your commission had 32 enforcement officers?

[fol. 3190] A. We had 16 up until 1938. The force was increased too, I believe, to about 24 men. You understand I am qualifying this because I don't have the record. I am trying to pick it out of my mind. From 1928 to about 1940 I believe we had about 24. Then in 1945 the figure was raised to 32.

Q. When you had 16 enforcement officers, how many carriers were under your jurisdiction?

A. Well, at the time we had 16 in addition to the carriers we have at the present time we also had some special classes of exempt and special and I don't have the figures. There were many more carriers than we have now.

Q. Why did you increase the number from 16 to 24?

A. They do many other things besides the enforcement of the act and by increasing them they provided additional service to the shipping public which we believe they are entitled to.

Q. What sort of service?

A. The matter of supplying certain tariff information, supplying the facilities when they may be needed, entering into or attempting to adjust certain controversies that may develop.

Q. Of these 16 officers, how many would you say, if they were working full time, would have been dedicated to the enforcement aspect of the regulations?

Mr. E. K. Wheeler: Mr. Examiner, I think that is calling for a conclusion.

The Witness: The only way you could determine that would be to take the time sheets day by day and make a [fol. 3191] tabulation and I don't have that.

By Mr. Lieberman:

Q. You have no opinion?

A. No.

Q. At least they weren't devoted completely to the enforcement?

A. That is right.

Q. Would you say one of the reasons for increasing the number from 16 to 24 was because you felt you could get better enforcement by having more men?

A. We believe we are a service organization to attempt to assist the shipping public and the industry itself and for that reason, as long as they pay the bill, we should supply that service.

Q. By "they" I presume you mean the public, the taxpayers?

A. No; the shipping public.

Q. In other words, the shipping public pays for it?

A. The industry itself pays for the administration of the act.

Q. Will you please explain that?

A. The Washington Department does not receive any funds at all from the general fund for the administration of the act. All the funds are paid by the industry ifself for its administration.

Q. Is that revenue derived from the plates and other tax fees that you have?

A. That is right, regulatory fees and things of that sort. [fol. 3192] Q. At the time that the Washington Commission increased its staff from 16 to 24, was that done in part at the suggestion of the regulated carriers?

A. It was.

Q. Did they tell you why they wanted an increase in the number of enforcement officers?

A. They did.

Q. I am speaking of the carriers, not the shippers.

A. They did.

Q. What was their reason?

A. They wanted the service, better regulation.

Q. And that would include enforcement?

A. That is right.

Q. When you increased your staff from 24 to — I don't recall whether it was 32 or an intermediate number——

A. During the war, of course, there was a drop in there, but it was 32.

Q. When you increased your staff from 24 to 32, did the carriers request such an increase?

A. Yes.

Q. Did they state to you what the compelling reason for that increase was?

A. Yes, better regulation.

Q. In other words, the motor carrier industry itself in the State of Washington was dissatisfied or wanted better compliance and therefore requested additional enforcement [fols. 3193-3194] officers?

A. I wouldn't say dissatisfied, but they had requested from time to time that we provide additional service.

Mr. Lieberman: Thank you. That is all.

Exam. Lawton: If there is nothing further, you are excused. Thank you.

(Witness excused.)

Exam. Lawton: Exhibit 49 will be received in evidence.

(Intervenor's Exhibit No. 49, Witness Stancer, received in evidence.)

[fol. 3195] Afternoon Session

Exam. Lawton: Come to order, please.
We will resume the hearing.

MICHAEL L. ADLEY was sworn and testified a follows:

Direct examination.

By Mr. Arpaia:

Q. Will you give your full name, address and position?

A. Michael L. Adley, secretary and treasurer of the Adley Express Company.

Q. When was the Adley Express Company incorporated?

A. 1926.

Q. Is that a Connecticut Corporation?

A. Yes.

Q. Does the Adley Express Company hold a certificate of authority to operate as a carrier of general commodities in interstate commerce from the Commission?

A. Yes.

Q. What is the number, if you know?

A. 2542.